DOCKET

No. 13-1175

Title:	City of Los Angeles, California, Petitioner
	v.
	Naranjbhai Patel, et al.
Docketed:	March 27, 2014
Lower Ct:	United States Court of Appeals for the Ninth Circuit
Case Nos.:	(08-56567)
Decision Date:	December 24, 2013

Questions Presented

—Date—	------Proceedings and Orders----------
Mar 24 2014	Petition for a writ of certiorari filed. (Response due April 28, 2014)
Apr 25 2014	Waiver of right of respondents Naranjbhai Patel, et al. to respond filed.
May 6 2014	DISTRIBUTED for Conference of May 22, 2014.
May 19 2014	Response Requested. (Due June 18, 2014)
May 28 2014	Order extending time to file response to petition to and including July 18, 2014.
Jul 10 2014	Order further extending time to file response to petition to and including August 18, 2014.
Aug 12 2014	Brief of respondents Naranjbhai Patel, et al. in opposition filed.
Aug 25 2014	Reply of petitioner City of Los Angeles, California filed.
Aug 27 2014	DISTRIBUTED for Conference of September 29, 2014.
Oct 6 2014	DISTRIBUTED for Conference of October 10, 2014.
Oct 14 2014	DISTRIBUTED for Conference of October 17, 2014.
Oct 16 2014	Letter from counsel for the respondents received. (Distributed)
Oct 16 2014	Letter from counsel for the petitioner received. (Distributed)
Oct 20 2014	Petition GRANTED.
Nov 5 2014	The time to file the joint appendix and petitioner's brief on the merits is extended to and including December 15, 2014.
Nov 5 2014	The time to file respondents' brief on the merits is extended to and including January 23, 2015.
Nov 17 2014	Consent to the filing of amicus curiae briefs, in support of either party or of neither party, received from counsel for the petitioner.
Nov 18 2014	Consent to the filing of amicus curiae briefs, in support of either party or of neither party, received from counsel for the respondents.
Dec 15 2014	Joint appendix filed. (Statement of costs filed.)
Dec 15 2014	Brief of petitioner City of Los Angeles, California filed.
Dec 19 2014	Brief amici curiae of County of Los Angeles, et al. filed.
Dec 19 2014	Brief amici curiae of California State Sheriffs' Association, et al. filed.
Dec 22 2014	SET FOR ARGUMENT ON Tuesday, March 3, 2015

Dec 22 2014	Brief amici curiae of National League of Cities, et al., filed.
Dec 22 2014	Brief amicus curiae of Manhattan Institute for Policy Research filed.
Dec 22 2014	Brief amicus curiae of United States filed.
Dec 22 2014	Brief amici curiae of California, et al. filed.
Dec 22 2014	Brief amicus curiae of Love146 in support of neither party filed.
Dec 22 2014	Brief amici curiae of Drug Free America Foundation, Inc., et al. filed.
Dec 22 2014	Record requested from U.S.C.A. 9th Circuit.
Dec 22 2014	Record from U.S.C.A. 9th Circuit is electronic and located on PACER.
Jan 5 2015	Record received from U.S.D.C. Southern Dist. of California Western Division. (1 -Box)
Jan 7 2015	CIRCULATED.
Jan 9 2015	Motion of the Solicitor General for leave to participate in oral argument as amicus curiae and for divided argument filed.
Jan 23 2015	Brief of respondents Naranjbhai Patel, et al. filed. (Distributed)
Jan 29 2015	Brief amici curiae of Professors Adam Lamparello and Charles E. MacLean filed. (Distributed)
Jan 30 2015	Brief amici curiae of Gun Owners of America, Inc., et al. filed. (Distributed)
Jan 30 2015	Brief amicus curiae of Asian American Hotel Owners Association filed. (Distributed)
Jan 30 2015	Brief amicus curiae of United States Chamber of Commerce filed. (Distributed)
Jan 30 2015	Brief amicus curiae of Institute for Justice filed. (Distributed)
Jan 30 2015	Brief amici curiae of Electronic Privacy Information Center (EPIC), et al. filed. (Distributed)
Jan 30 2015	Brief amicus curiae of Electronic Frontier Foundation filed. (Distributed)
Jan 30 2015	Brief amicus curiae of The Rutherford Institute filed. (Distributed)
Jan 30 2015	Brief amicus curiae of The Cato Institute filed. (Distributed)
Jan 30 2015	Brief amicus curiae of Google Inc. filed. (Distributed)
Feb 18 2015	Reply of petitioner City of Los Angeles, California filed. (Distributed)
Feb 20 2015	Motion of the Solicitor General for leave to participate in oral argument as amicus curiae and for divided argument GRANTED.
Mar 3 2015	Argued. For petitioner: E. Joshua Rosenkranz, New York, N.Y.; and Michael R. Dreeben, Deputy Solicitor General, Department of Justice, Washington, D.C. (for United States, as amicus curiae.) For respondents: Thomas C. Goldstein, Bethesda, Md.
Jun 22 2015	Adjudged to be AFFIRMED. Sotomayor, J., delivered the opinion of the Court, in which Kennedy, Ginsburg, Breyer, and Kagan, JJ., joined. Scalia, J., filed a dissenting opinion, in which Roberts, C. J., and Thomas, J., joined. Alito, J., filed a dissenting opinion, in which Thomas, J., joined.

PETITION FOR WRIT OF CERTIORARI

Supreme Court, U.S.
FILED
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OFFICE OF THE CLERK

13-1175
No. _____

In the Supreme Court of the United States

CITY OF LOS ANGELES,
Petitioner,

v.

NARANJIBHAI PATEL, RAMILABEN PATEL,
LOS ANGELES LODGING ASSOCIATION,
Respondents.

On Petition for Writ of Certiorari to the United States Court of Appeals for the Ninth Circuit

PETITION FOR WRIT OF CERTIORARI

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QUESTIONS PRESENTED FOR REVIEW

I.

To resolve a split between the Ninth and Sixth Circuits are facial challenges to ordinances and statutes permitted under the Fourth Amendment?

II.

To resolve a spilt between the Ninth Circuit and the Massachusetts Supreme Court, does a hotel have an expectation of privacy under the Fourth Amendment in a hotel guest registry where the guest supplied information is mandated by law and that ordinance authorizes the police to inspect the registry? If so, is the ordinance facially unconstitutional under the Fourth Amendment unless it expressly provides for pre-compliance judicial review before the police can inspect the registry?

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INTRODUCTION

In this case, the Ninth Circuit en banc held 7-4 the City of Los Angeles' hotel guest registry inspection ordinance is facially unconstitutional because it does not provide for pre-compliance judicial review before the register is examined by a police officer. The dissent argued Fourth Amendment facial challenges are advisory opinions, challenges under the Fourth Amendment require "concrete" facts.

In *Warshak v. United States*, 532 F.3d 521 (6th Cir. 2008) (en banc) the Sixth Circuit held 9-5 that facial challenges under the Fourth Amendment are improper because Fourth Amendment challenges require a "concrete" factual context otherwise they are speculative. The majority held the claims were not ripe.

In this case, the Ninth Circuit en banc held 7-4 that hotel operators have an expectation of privacy in their guest registers and as such the City of Los Angeles' ordinance which authorizes police inspections of guest registers is facially unconstitutional under the Fourth Amendment because it does not provide for pre-compliance judicial review.

The Massachusetts Supreme Court in *Commonwealth v. Blinn*, 399 Mass. 126, 503 N.E.2d 25 (1987), unanimously held in an as-applied challenge under the Fourth Amendment that the state's hotel guest registry statute, which is closely analogous to the City of Los Angeles' ordinance, permitted routine warrantless searches of hotel guest registries because hotel operators did not have a reasonable expectation of privacy in the registry.

OPINIONS BELOW

The United States District Court for the Central District of California entered its unpublished findings of fact and conclusions of law on September 5, 2008. Appendix (App.) 49. Judgment was entered on September 5, 2008. App. 58. The United States Court of Appeals for the Ninth Circuit filed its opinion on July 17, 2012, which was published at *Patel v. City of Los Angeles*, 708 F.3d. 1075 (9th Cir. 2012). App. 35. The Ninth Circuit en banc on December 24, 2013, filed its published decision at *Patel v. City of Los Angeles*, 738 F.3d 1058 (9th Cir. 2013) (en banc). App. 1.

JURISDICTION

The Ninth Circuit filed its en banc opinion on December 24, 2013. Jurisdiction is conferred upon this court to review on a writ of certiorari pursuant to 28 U.S.C. § 1254(1).

APPLICABLE CONSTITUTIONAL, STATUTORY, AND ORDINANCE PROVISIONS

The Fourth Amendment to the United States Constitution, 42 U.S.C. § 1983, and Los Angeles Municipal Code § 41.49 pertain to this petition. Pursuant to Supreme Court Rule 14.1(f) these provisions are reproduced verbatim at Appendix D.

STATEMENT OF THE CASE

A. Background

This petition raises "important constitutional questions " *Patel v. City of Los Angeles*, Tallman J., dissenting, App.18. This case under the Fourth Amendment *facially* challenges the constitutionality a

City Los Angeles (City) municipal code section which requires hotels to maintain guest registries and to make those registries subject to police inspection. The Ninth Circuit en banc majority concluded the ordinance was facially unconstitutional because it did not expressly require pre-compliance judicial review before the registry is inspected by police officers. App. 13-14.

The District Court rejected respondents' facial challenge to the ordinance. App. 49-57.

The Ninth Circuit in a 2-1 published decision rejected respondents' facial challenge to the ordinance. App. 46.

The Ninth Circuit after en banc rehearing in a 7-4 published decision reversed the judgment by finding the City's ordinance facially violated the Fourth Amendment. App. 1.

B. Facts

The District Court's findings of fact are simple and undisputed. The only exhibit introduced into evidence during the bench trial was LAMC § 41.49. The District Court found "Plaintiffs have been subject to and continue to be subject to searches and seizures of motel registration records by the Los Angeles Police Department without consent or warrant pursuant to LAMC § 41.49, which permits law enforcement to demand inspection of motel records at any time without consent or warrant." App. 4. The District Court also found the "sole issue" to be decided is whether LAMC § 41.49 is facially unconstitutional under the Fourth Amendment. App. 53.

The Ninth Circuit's en banc opinion summarized the City's ordinance:

> "Section 41.49 requires hotel and motel operators to collect and record detailed information about their guests in either paper or electronic form. The records must contain: the guest's name and address; the number of people in the guest's party; the make, model, and license plate number of the guest's vehicle if the vehicle will be parked on hotel property; the guest's date and time of arrival and scheduled date of departure; the room number assigned to the guest; the rate charged and the amount collected for the room; and the method of payment. L.A. Mun. Code § 41.49(2)(a). For cash-paying and walk-in guests, as well as any guest who rents a room for less than twelve hours, the records must also contain the number and expiration date of the identification document the guest presented when checking in. § 41.49(4). For guests who check in using an electronic kiosk, hotel operators must record the guest's name, reservation and credit card information, and the room number assigned to the guest. § 41.49(2)(b). These records must be 'kept on the hotel premises in the guest reception or guest check-in area or in an office adjacent to that area' for a period of 90 days. § 41.49(3)(a).
>
> "Plaintiffs do not challenge these requirements. But they do challenge § 41.49's warrantless inspection requirement, which states that hotel guest records "shall be made available to any

> officer of the Los Angeles Police Department for inspection," provided that, '[w]henever possible, the inspection shall be conducted at a time and in a manner that minimizes any interference with the operation of the business.' *Id.* The city stipulated that this provision authorizes police officers to inspect hotel guest records at any time without consent or a search warrant. Failure to comply with an officer's inspection demand is a misdemeanor, punishable by up to six months in jail and a $1000 fine. L.A. Mun. Code § 11.00(m)." Note omitted; App. 4-5.

REASONS FOR GRANTING THE PETITION

Succinctly stated, the Ninth Circuit in a severely divided 7-4 decision and the Sixth Circuit in a likewise severely divided 9-5 decision reached fundamentally different conclusions as to whether a facial Fourth Amendment challenge to an ordinance or for that matter a statute can be asserted. The Ninth Circuit and the Supreme Court of Massachusetts are split as to whether a hotel operator has an expectation of privacy under the Fourth Amendment in a hotel guest registry. The Massachusetts Supreme Court held there is no reasonable expectation of privacy in the guest registry. The Ninth Circuit held there is an expectation of privacy in the registry and since the City's ordinance did not expressly provide for pre-compliance judicial review it facially violates the Fourth Amendment.

Not only is there a multi-tier split of decision by severely divided courts, there is a compelling national interest to decide these issues. Hotel guest registry inspection statutes and ordinances are ubiquitous.

Attached as Appendix E to this petition is a mere representative illustration of these laws. The appendix includes a total of 70 such laws including two state statutes, county and city ordinances from across the country ranging from large cities to small towns representing 26 states. These laws expressly help police investigate crimes such as prostitution and gambling, capture dangerous fugitives and even authorize federal law enforcement to examine these registers, an authorization which can be vital in the immediate aftermath of a homeland terrorist attack. Unless certiorari is granted, the hotel inspection laws within the Ninth Circuit will be facially unconstitutional and the laws throughout the nation will be in jeopardy.

I. THE NINTH CIRCUIT IN *PATEL* IN A 7-4 SPLIT DECISION AND THE SIXTH CIRCUIT IN *WARSHAK* IN A 9-5 SPLIT DECISION ARE IN CONFLICT AS TO WHETHER AN ORDINANCE OR STATUTE CAN FACIALLY VIOLATE THE FOURTH AMENDMENT

A. General Principles to Facially Challenge a Statute

A facial challenge to a law's constitutionality is an effort "to invalidate the law in each of its applications, to take the law off the books completely." *Connection Distrib. Co. v. Holder*, 557 F.3d 321, 335 (6th Cir. 2009) (en banc). In contrast, an as-applied challenge argues a law is unconstitutional as enforced against the plaintiffs before the court; a facial challenge is not an attempt to invalidate the law in a discrete setting, but an effort "to leave nothing standing[.]" *Warshak* at 528. As-applied challenges, however, are the "basic building

blocks of constitutional adjudication." *Gonzales v. Carhart*, 550 U.S. 124, 127 S. Ct. 1610, 1639, 167 L. Ed. 2d 480 (2007).

This court in *Wash. State Grange v. Wash. State Republican Party*, 552 U.S. 442, 449, 128 S. Ct. 1184; 170 L. Ed. 2d 151 (2008) quoting *United States v. Salerno*, 481 U.S. 739, 745, 107 S. Ct. 2095, 95 L. Ed. 2d 697 (1987) said a "plaintiff can only succeed in a facial challenge by establish[ing] that no set of circumstances exists under which the Act would be valid, 'i.e., that the law is unconstitutional in all of its applications. To determine whether a law is facially invalid "we must be careful not to go beyond the statute's facial requirements and speculate about 'hypothetical' or 'imaginary' cases. *See United States v. Raines*, 362 U.S. 17, 22, 80 S. Ct. 519, 4 L. Ed. 2d 524 (1960)." A "facial challenge must fail when the statute has a plainly legitimate sweep.'" *Id.*, citation omitted. "Exercising judicial restraint in a facial challenge 'frees the Court not only from unnecessary pronouncement on constitutional issues, but also from premature interpretations of statutes in areas where constitutional application might be cloudy.' *Raines*, *supra*, at 22, 80 S. Ct. 519, 4 L. Ed. 2d 524." *Id.* at 449-450. Likewise, this court in *Sibron v. New York*, 392 U.S. 40, 88 S. Ct. 1889, 20 L. Ed. 2d 917 (1968) called facial challenges "the abstract and unproductive exercise of laying the extraordinarily elastic categories of [N.Y. Code Crim. Proc.] § 180-a next to the categories of the Fourth Amendment in an effort to determine whether the two in some sense are compatible. The constitutional validity of a warrantless search is pre-eminently the sort of question which *can only be*

decided in the concrete factual context of the individual case."[1] Emphasis added.

In *Wash. State Grange*, this court summarized its fundamental dislike for facial statutory challenges:

> "Facial challenges are disfavored for several reasons. Claims of facial invalidity often rest on speculation. As a consequence, they raise the risk of 'premature interpretation of statutes on the basis of factually barebones records.' *Sabri v. United States*, 541 U.S. 600, 609, 124 S. Ct. 1941, 158 L. Ed. 2d 891 (2004) (internal quotation marks and brackets omitted). Facial challenges also run contrary to the fundamental principle of judicial restraint that courts should neither "'anticipate a question of constitutional law in advance of the necessity of deciding it'" nor "'formulate a rule of constitutional law broader than is required by the precise facts to which it is to be applied.'" *Ashwander v. TVA*, 297 U.S. 288, 346–347, 56 S. Ct. 466, 80 L. Ed. 688 (1936) (Brandeis, J., concurring) (quoting *Liverpool, New York & Philadelphia S. S. Co. v. Commissioners of Emigration*, 113 U.S. 33, 39, 5 S. Ct. 352, 28 L. Ed. 899 (1885)). Finally, facial challenges threaten to short circuit the democratic process by preventing laws

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[1] Numerous cases have followed this court's "concrete" requirement. *See, e.g., Free Speech Coalition, Inc. v. United States*, 677 F.3d 519, 543 (3d Cir. 2012); *United States v. Rundle*, 402 F.2d 701, 704 (3d Cir. 1968); *United States v. Baker*, 78 F.3d 135, 138 (4th Cir. 1996); *United States v. Holloway*, 962 F.2d 451, 454 (5th Cir. 1992); *United States v. $291,828.00 in United States Currency*, 536 F.3d 1234, 1238 (11th Cir. 2008).

embodying the will of the people from being implemented in a manner consistent with the Constitution. We must keep in mind that "'[a] ruling of unconstitutionality frustrates the intent of the elected representatives of the people.'" *Ayotte v. Planned Parenthood of Northern New Eng.*, 546 U.S. 320, 329, 126 S. Ct. 961, 163 L. Ed. 2d 812 (2006)(quoting *Regan v. Time, Inc.*, 468 U.S. 641, 652, 104 S. Ct. 3262, 82 L. Ed. 2d 487 (1984) (plurality opinion)). It is with these principles in view that we turn to the merits of respondents' facial challenge to I-872." *Id.* at 450-451, 128 S. Ct. 1184; 170 L. Ed. 2d 151.

A1. The Majority Opinion Held the City's Ordinance Facially Violated the Fourth Amendment Because There Was No Pre-Compliance Judicial Review

The majority first quickly concluded that a police officer's inspection of a hotel guest registry constituted a search because the City's ordinance authorized a physical intrusion of the hotel's papers and an invasion of the hotel's protected privacy interests citing *Rakas v. Illinois*, 439 U.S. 128, 114, n.12, 99 S. Ct. 421, 58 L. Ed. 2d 387 (1978). App. 6-7. The majority reasoned the information contained in the hotel registry implicates the hotel's privacy rights because businesses do not ordinarily disclose "commercially sensitive information" such as customer lists, pricing practices and occupancy rates even though these records are required by law. App. 6-7. The majority in response to the dissent, however, acknowledged that if the records

were "'publically accessible'" then they would not be protected by the Fourth Amendment. [2,3] App. 8.

The majority then turned to whether a search conducted in accordance with § 41.49 is reasonable. The majority *assumed* the ordinance authorized administrative record searches of the guest registry. App. 9-10. Although the majority assumed the ordinance contemplated the inspection take place in the public "'guest reception or guest check-in area of the hotel'" the majority said that it need not decide whether record inspections occurring in a place such as a hotel lobby required an administrative search warrant. App. 10.

The majority held in reliance upon *Marshall v. Barlow's, Inc.* 436 U.S. 307, 321, 98 S. Ct. 1816; 56 L. Ed. 2d 305 (1978) that the City's ordinance was facially

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[2] The majority in reliance upon *United States v. Cormier,* 220 F.3d 1103, 1108 (9th Cir. 2000) and *United States v. Miller,* 425 U.S. 435, 440, 96 S. Ct. 1619, 48 L. Ed. 2d 71 (1976) acknowledged hotel guests lack a privacy interest in their own hotel records. App. 8. There is no assertion in this case that hotel guests have a privacy interest in the guest registry.

[3] Alameda County, California, which includes the large of cities of Oakland and Berkeley, and whose county population is in excess of 1,500,000, has an ordinance which mandates that guest registries in the county "shall at all times be open to public inspection . " as does the small town of Tarrant, Ala. (Tarrant, Ala. Code § 12-4 (2013)) *See,* App. 68, 102-103; http://quickfacts.census.gov/qfd/states/06/06001.html (last visited March 21, 2013); (Alameda County, Cal., Code § 3.20.010 (2013); https://data.oaklandnet.com/dataset/Alameda-County-Census-Tract-Results-2010/az9z-tyn9 (last visited March 21, 2014); http://www.ci.berkeley.ca.us/Home.aspx (last visited March 21, 2014)

invalid. App. 11. The party subject to the demand for inspection must be afforded the opportunity of judicial review of the reasonableness of the demand before being subject to penalties for refusal. App. 12, citations omitted. "Section 41.49 lacks this essential procedural safeguard against arbitrary or abusive inspection demands. As presently drafted, § 41.49 provides no opportunity for pre-compliance judicial review of an officer's demand to inspect a hotel's guest records. Hotel operators are thus subject to the 'unbridled discretion of officers in the field, who are free to choose whom to inspect, when to inspect, and the frequency with which those inspections occur. *See Barlow's,* 436 U.S. at 423." App. 12. The majority further said the absence of pre-compliance judicial review for businesses which are not closely regulated[4] renders the ordinance inconsistent with of the Fourth Amendment. App. 12. The majority summarized its holding:

> "We hold that § 41.49's requirement that hotel guest records 'shall be made available to any officer of the Los Angeles Police Department for inspection' is facially invalid under the Fourth Amendment insofar as it authorizes inspections of those records without affording an opportunity to 'obtain judicial review of the reasonableness of the demand prior to suffering the penalties for refusing to comply.' *See* [*v. City of Seattle*] 387 U.S.[, 541] 545[, 87 S. Ct. 1737, 18 L. Ed. 2d 943 (1967)]. Because this procedural deficiency affects the validity of all

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[4] The District Court ruled the evidence on this record was insufficient to establish whether hotels in the City are closely regulated businesses. App. 54-55.

searches authorized by § 41.49(3)(a), there is no circumstances in which the record inspection provision may be constitutionally applied. *See United States v. Salerno*, 481 U.S. 739, 745 (1987). Facial invalidation of the provision, as plaintiffs have requested, is therefore appropriate. *See Barlow's*, 436 U.S. at 325; [*McLaughlin v.*] *Kings Island*, 849 F.2d [990,] 997 [1988]." App. 13-14.

A2. Judge Tallman Dissented and Joined by Three Additional Judges Concluded Facial Challenges to Legislative Enactments under the Fourth Amendment Require a "Concrete" Factual As-Applied Context Otherwise the Decision Is an Advisory Opinion

There were two dissents, the first by Judge Tallman, joined by judges O'Scannlain, Clifton and Callahan. The second dissent was by Judge Clifton and joined by judges O'Scannlain, Tallman and Callahan. The two dissents took strong exception to the majority's reasoning. The Tallman dissent preliminarily noted from the face of the ordinance when police officers request the guest register the hotel must comply, nothing in the ordinance mentions warrants, consent, exigencies or any other recognized exception to the warrant requirement. App. 15. Judge Tallman said respondents may be correct in an as-applied challenge that their Fourth Amendment rights may be violated, but they inexplicably dropped their as-applied challenge before trial. App. 15. Instead, respondents "ask us to assume the exercise of

analyzing *all* potential searches that *might* be conducted pursuant to the ordinance in order to declare it deficient." App. 15-16, emphasis original. Judge Tallman placed principle reliance upon *Sibron*, 61-62, 88 S. Ct. 1889, 20 L. Ed. 2d 917 where this court rejected a facial Fourth Amendment challenge to a statute; instead this court instructed "'we should confine our review to the reasonableness of the searches and seizures' that have already taken place" and base that review on the concrete facts to which the statute was applied. App. 17. Although as the dissent noted respondents' counsel claimed at argument that searches have taken place no details of those claimed searches were provided. App. 17.

Judge Tallman took pointed exception to the "disconnect" between the language of the ordinance, what the majority concludes, what the ordinance authorizes and the majority's opinion is "rife with assumptions." App. 17. Indeed, for a statute to be facially infirm there must be "'no set of circumstances ... under which the [law] would be valid.'" App. 18, quoting *Wash. State Grange,* at 449, 128 S. Ct. 1184; 170 L. Ed. 2d 151. Even assuming respondents were subject to warrantless searches Judge Tallman concluded there were no "concrete facts" to analyze the circumstances of each individual search, but even if those facts were known respondents made the tactical decision to withdraw any challenge to those searches. App. 18-19. Judge Tallman noted the majority's reliance upon *Barlow's* was fundamentally misplaced because *Barlow's* arose in a specific factual context and unlike *Barlow's* where the statute authorized specific government conduct, the ordinance instead imposes the responsibility on the hotelier, "a critical difference."

App. 21. The dissent moreover observed that *Barlow's* did not strike down the statute "altogether," rather on the concrete factual application arising from an as-applied challenge the court held the statute unconstitutional only to the extent it authorized inspections without a warrant or its equivalent. App. 22.

Judge Tallman further said that unlike *Barlow's* this case is

> "totally bereft of facts to support the majority's assumption that the statute is actually being applied in that manner. [Respondents] put forth no evidence at trial demonstrating that they (or any hotelier of that matter) have not had the opportunity to obtain judicial review of any guest registers, nor have they shown *any* hotelier has suffered a penalty for refusing to comply. The majority simply lacks the factual predicate to support its conclusion. [¶] Instead we are left with an *advisory opinion* that engages the folly which *Sibron* warned us to avoid." App. 23. Emphasis added.

At App. 23, n. 2, Judge Tallman said the cases which the majority relies: *Donovan v. Lone Steer, Inc.*, 464 U.S. 408, 104 S. Ct. 769, 78 L. Ed. 2d 567 (1984); *Barlow's*; *See v. City of Seattle* and *Camara v. Mun. Ct.*, 387 U.S. 523, 87 S. Ct. 1727; 18 L. Ed. 2d 930 (1967) all "analyzed whether specific government conduct was unconstitutional, not whether mere language employed in a statute or regulation was invalid. In this case, we do not have specific government conduct to adjudicate."

A3. Judge Clifton Dissented and Joined by Three Additional Judges Concluded the Facial Challenge to the City's Ordinance Failed to Establish There Was an Expectation of Privacy in All Instances and There Was No Basis for the Majority to Require Pre-Compliance Judicial Review in Every Instance

Judge Clifton's dissent said the majority opinion was wrong because it ignores the nature of facial challenges and it ignores the high bar for these challenges. The majority was also wrong because it failed to establish that a search of hotel guest registries would be was unreasonable. App. 25. Although Judge Clifton agreed with the majority that the City's ordinance authorizing an inspection constituted a search under the Fourth Amendment, but the true question which the majority failed to address is whether such a search is reasonable and reasonableness is the "'ultimate measure'" of the Fourth Amendment. App. 26, citations omitted.

Although the majority opinion claimed the balance for reasonableness was already struck, the failure to provide for pre-compliance judicial review was fatal for the ordinance because it is an absolute requirement for constitutionality, but that omission may only preclude the administrative subpoena or inspection exception to the Fourth Amendment. App. 27. Judge Clifton noted pre-clearance is not required for a "'Terry stop,'" a warrantless automobile search or "any other exigent circumstance" exception to the Fourth Amendment. App. 27-28. "The lack of pre-compliance judicial review

does not necessarily make a search unreasonable under the Fourth Amendment. The majority concedes that fact ., but the lack of pre-compliance judicial review is all the majority opinion discusses " App. 28.

In contrast to the majority, Judge Clifton noted the District Court examined the "harder question" of whether respondents had a legitimate privacy interest in the hotel registry information such that the ordinance was facially unreasonable. App. 29. Instead the majority "knocked over a straw man" by concluding the ordinance did not qualify for the administrative subpoena exception. App. 29.

Although as Judge Clifton noted the majority conceded there was an expectation of privacy because the guest registry is protected by the Fourth Amendment, the majority failed to establish that a search of the guest registry would be unreasonable in all circumstances. App. 29-30. Although there is no proof in the record that respondents may treat the guest registry as private, on a facial challenge to the ordinance, the subjective views of respondents are of little value, the question is whether the hotel industry generally treats these records as private, but there is no evidence of that in the record. App. 30. Indeed, "there are hotels which voluntarily share information about guests with law enforcement without being served with a warrant and without the duress of this ordinance." App. 31. *See Cormier*, 220 F.3d, at 1106. The majority improperly declared the ordinance unconstitutional based upon the assumption that hotels generally expect information contained in their guest registries to be private.

Likewise, Judge Clifton noted a guest registry may be publically accessible book readily available in a hotel lobby and under these circumstances "[s]ociety likely does not recognize a legitimate expectation of privacy in information kept in a manner so easily accessible to anyone entering a hotel."[5] App. 32, citation omitted.

Judge Clifton concluded his dissent: "[f]or Plaintiffs to prevail, they must demonstrate that the search provided under the ordinance is unreasonable in all circumstances. They have not, and the majority opinion has not, either." App. 34.

A4. The Three Judge Ninth Circuit Panel Split 2-1 to Hold the Hotel Operator Had No Reasonable Expectation of Privacy in the Guest Register

The three judge appellate panel in its published decision affirmed the trial court in a 2-1 decision. The court held the ordinance on its face created no reasonable expectation of privacy for the hotel owner because the information contained in the guest register pertained to the guests and no evidence was presented that either respondents or hotel owners generally treated the information required by the ordinance to be private. App. 39-40. Likewise, the hotel owners presented no evidence that hotel owners generally treat guest registers as a private document. App. 40. The majority observed some hotels may use an old fashioned book left on the hotel counter in the guest reception area which would be accessible to anyone; in this situation society would "unlikely" find a reasonable

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[5] *See*, n. 3, *supra*.

expectation of privacy. App. 41. Respondents thus failed to prove they had an objectively reasonable expectation of privacy in the information contained in the guest register much less proving all hotel operators treated the information as private. App. 42-43.

The court also concluded even if respondents did not have a privacy interest in the guest register and even though the register is "protected paper" within the meaning of the Fourth Amendment, no seizure of property is inherent under the ordinance. App. 43. Nothing in the ordinance precludes the hotel operator from keeping the information available for its own use while simultaneously making it available to the police for inspection. App. 44. The ordinance expressly provides the inspection shall be conducted in a way to minimize business interference. App. 44. Similarly, the inspection is not a physical invasion of the hotel operator's private premises because the register is to be maintained in the public guest reception or check-in area or in an office adjacent to these areas. App. 44. Respondents thus failed to prove the limited intrusion authorized by the ordinance is unreasonable for them or for all hotel operators; the facial challenge to the ordinance fails. App. 44.

The abbreviated dissent essentially said warrantless searches by police officers are per se unconstitutional absent a few specifically defined exceptions. App. 46. The ordinance authorizes the search of hotel records without a warrant and since no recognized exception to the warrant requirement applies to the ordinance it facially violates the Fourth Amendment. App. 47. "The majority opinion conflicts

with long standing and well-established Fourth Amendment jurisprudence." App. 47.

A5. The District Court Ruled There Was Insufficient Evidence to Find the Hotel Industry Had a Reasonable Expectation of Privacy in the Guest Register

The court concluded as a matter of law that § 41.49 was not facially invalid because respondents did not assert they had a privacy interest in the hotel records, but rather they asserted the information contained in the guest register could be used for other purposes which would be protected by the Fourth Amendment. App. 55-56. The District Court ruled "hotel and motel owners may keep the records available for review in a guest check-in or reception area. Hotels and motels are generally open to receive guests at all times. The records subject to the inspection are required by law to be kept. App. 56-57. The District Court said it found no case where hotel owners have a reasonable expectation of privacy in records created pursuant to municipal ordinance. App. 56-57. As such, respondents failed to meet their "high burden" that the ordinance cannot be valid under any circumstances. App. 57.

A6. The Three Widely Varying Judicial Decisions in this Case Coupled with Two Divergent Dissents Manifests the Complexity of the Issues Presented

The City's guest registry ordinance was examined by the District Court and two deeply divided Ninth Circuit panels. The complexity of the issues presented

is manifested by the three distinct approaches taken by the lower courts. These divergent views in this case alone manifest the need for certiorari.

A7. The Sharply Divided 9-5 Split in the Sixth Circuit's *Warshak* Decision Which Held There Can Not Be Facial Challenges to Statutes under the Fourth Amendment Is in Direct Conflict with the Ninth Circuit's Decision in *Patel*

Like the deeply divided Ninth Circuit in *Patel*, the Sixth Circuit was deeply divided when it considered whether there could be a facial challenge to a statute. In direct conflict with the majority in *Patel*, the court in *Warshak*, 532 F.3d 521, 528 held in a split 9-5 decision that 18 U.S.C. § 2703(d) (Stored Communications Act) was not susceptible to a facial challenge under the Fourth Amendment.

The facts of *Warshak* fit a similar template to those in *Patel*. In *Patel*, there were allegations (but no proof) of prior police inspections of guest registries, coupled with the assertion that there will be future inspections. In *Warshak*, the federal government obtained an *ex parte* court order pursuant to 18 U.S.C. § 2703(d) to compel Warshak's internet service provider to produce his emails. Approximately one year later Warshak learned about these orders, he then filed a declaratory relief action to prospectively invalidate § 2703(d) under the Fourth Amendment. In rejecting Warshak's facial challenge to the statute the majority observed "we have no idea whether the government will conduct an *ex parte* search of Warshak's e-mail account in the future and plenty of reason to doubt that it will, making this

a claim that depends on 'contingent future events that may not occur as anticipated, or indeed may not occur at all." *Id.* at 526, citations omitted. Although Warshak asserted it was "fair to assume" the government would again search his e-mail accounts based on its prior conduct, the majority concluded the assertion was speculative citing *Toilet Goods Ass'n, Inc. v. Gardner*, 387 U.S. 158, 163, 87 S. Ct. 1520, 18 L. Ed. 2d 697 (1967) because it lacked a "'concrete factual context.'" *Id.* at 527.

The court in *Warshak* said challenges to the reasonableness of a search under the Fourth Amendment in the criminal context is a motion to suppress and in the civil context an action either by 42 U.S.C. § 1983 or *Bivens v. Six Unknown Named Agents of the Federal Bureau of Narcotics,* 403 U.S. 709, 718, 107 S. Ct. 1492, 94 L. Ed. 2d 714 (1987). *Id.* at 528. In either instance the court looks to "an actual, not a hypothetical search in the context of a developed factual record of the reasons for the search. A pre-enforcement challenge to future e-mail searches, by contrast provides no factual context. The Fourth Amendment is designed to account for unpredictable and limitless range of factual circumstances, and accordingly it generally should be applied after those circumstances unfold, not before." *Id.* Although Warshak asserted the issue presented was a purely a legal question the majority concluded it remained "a purely *speculative* legal question, this case must be answered differently in different settings and a legal question that 'depend[s] on an understanding of complex factual issues." *Id.*, emphasis original, citation omitted. The majority then observed:

> "Making matters worse, Warshak's complaint sought, and the district court's injunction gave him, pre-enforcement relief not just on behalf of himself but on behalf of *all* e-mail users. The point of this attack on the statute, like all facial challenges, was to leave nothing standing--to prevent § 2703(d) from ever being enforced without a warrant and probable cause, no matter the circumstances, no matter the individual's expectation of privacy, no matter the government's interests in obtaining the information without tipping the suspect off to the investigation." *Id.*, emphasis original.

The court acknowledged Warshak's argument that the Supreme Court issued opinions which in effect invalidated statutes in whole or in part under the Fourth amendment citing, *e.g.*, *Payton v. New York,* 445 U.S. 573, 589-590, 100 S. Ct. 1371, 63 L. Ed. 2d 639 & n.46 (1980); *Torres v. Puerto Rico*, 442 U.S. 465, 471, 474, 99 S. Ct. 2445, 61 L. Ed. 2d 1 (1979), but the Supreme Court reviewed these statutes in "concrete settings. " *Id.* at 531. The court noted the Stored Communications Act was in existence for 22 years and there were no successful Fourth Amendment challenges to the Act. The court did not want to "hypothesize how the government might conduct a conjectural search of Warshak's e-mails, then resolve the constitutionality of the search as well as any others the government might conduct under the statute " *Id.* Since there were no "concrete facts" for the court to adjudicate Warshak's claims the majority concluded his action was not ripe, the action was dismissed. *Id.* at 533-534.

A8. The *Warshak* Dissent Would Have Allowed a Facial Challenge to the Statute

Although the dissent primarily focused on the majority's ripeness discussion, Judge Martin speaking for the five dissenters rejected the majority's preclusion of facial Fourth Amendment challenges:

> "History tells us that it is not the fact that a constitutional right is at issue that portends the outcome of a case, but rather what specific right we are talking about. If it is free speech, freedom of religion or the right to bear arms, we are quick to strike down laws that curtail those freedoms. But if we are discussing the Fourth Amendment's right to be free from unreasonable searches and seizures, heaven forbid that we should intrude on the government's investigatory province and actually require it to abide by the mandates of the Bill of Rights. I can only imagine what our founding fathers would think of this decision. If I were to tell James Otis and John Adams that a citizen's private correspondence is now potentially subject to *ex parte* and unannounced searches by the government without a warrant supported by probable cause, what would they say? Probably nothing, they would be left speechless." *Id.* at 538.

A9. Caparison Between *Patel* and *Warshak* Compels the Granting of Certiorari

The comparison between *Patel* and *Warshak* opinions is striking. The four dissenters in *Patel* said facial challenges to the Fourth Amendment are advisory opinions. The nine member majority in *Warshak* said facial challenges to statutes under the Fourth Amendment are unripe. Both the *Patel* dissent and the *Warshak* majority said challenges to legislative enactments under the Fourth Amendment require "concrete facts." The seven member majority in *Patel* and the five *Warshak* dissenters concluded facial challenges under the Fourth Amendment are proper. The *Patel* majority said an inspection of the guest registry in this case requires pre-compliance judicial review and *Warshak* dissent concluded that the government's examination of person's private correspondence required a warrant supported by probable cause.

In these two decisions alone 26 en banc judges adjudicated whether there can be a facial challenge to a legislative enactment under the Fourth Amendment. Eleven judges said facial challenges are available under the Fourth Amendment, 15 judges rejected these lawsuits. Certiorari should be granted to settle, as Judge Tallman said this "important constitutional question[] " App.18.

II. THE NINTH CIRCUIT IN *PATEL* AND THE MASSACHUSETTS SUPREME COURT IN *BLINN* REACHED CONFLICTING CONCLUSIONS AS TO WHETHER A HOTEL OPERATOR HAS AN EXPECTATION OF PRIVACY UNDER THE FOURTH AMENDMENT IN A HOTEL GUEST REGISTRY WHERE THE GUEST SUPPLIED INFORMATION IS MANDATED BY LAW AND THAT LEGISLATIVE ENACTMENT AUTHORIZES THE POLICE TO INSPECT THE REGISTRY

A. The Massachusetts Supreme Court in *Blinn* Holds a Hotel Operator Has No Fourth Amendment Expectation of Privacy in the Guest Register

In *Blinn*, 399 Mass. 126, 503 N.E.2d 25, a state trooper went to a Howard Johnson's motel. While there he asked the motel's manager, Blinn, to produce the guest register for inspection. Blinn refused to comply absent a search warrant. The state trooper left the motel and later returned with a copy of Mass. Ann. Laws ch. 140, § 27 (1984)[6] which required an "innholder" to keep a guest register which "shall be open to the inspection of the . . police." *Id.* at 126, n.1. Once again Blinn refused to produce the register absent a search warrant. The trooper left, but later returned with two additional troopers; this time Blinn produced the register. The trooper did not obtain a

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[6] The current version of the statute, which is essentially the same, is reproduced at App. 67.

search warrant. Blinn was later convicted for failing to produce the register.

Blinn challenged his conviction asserting the trooper's search violated the Fourth Amendment. The Supreme Court rejected Blinn's claims. The court held Blinn had no reasonable expectation of privacy in the guest register because a business has a reduced expectation of privacy, the guest register was required to be kept by statute which placed Blinn on notice that it was subject to police inspection (which is not determinative, but it is a factor) and motel guests were on notice by a sign required by statute which summarized the laws regarding the register. *Id.* at 128. The court also rejected Blinn's claim under state law that the trooper's demand to see the guest register amounted to an illegal administrative search. *Id.* at 129.

A1. *Blinn* Conflicts with *Patel*

The ordinance in *Patel* and the state statute in *Blinn* are fundamentally the same. In both instances: (1) the legislative enactments mandate the hotel operator to maintain a hotel registry; (2) the legislative enactments mandate the hotel operator collect certain information from the hotel guest for placement in the registry; (3) the legislative enactments authorize police officers to inspect the registry; (4) both legislative enactments do not expressly provide for pre-compliance judicial review or obtaining a warrant; and (5) and the hotel operator's failure to comply with a police officer's request for inspection is guilty of a crime.

Although *Blinn* arose in the as-applied context and was not a facial challenge to the state statute it

nevertheless is in conflict with *Patel*. Indeed, if a statute survives an as-applied challenge it cannot be facially unconstitutional. *Patel* concluded the City's ordinance, which is substantively similar to that of the Massachusetts statute, was facially unconstitutional because pre-enforcement judicial review was required, but in *Blinn* the court upheld the warrantless search under the Fourth Amendment.

For a facial challenge to succeed there must be no circumstances whatsoever where the legislative enactment could be constitutional. See *Wash. State Grange*, 552 U.S., at 449, 128 S. Ct. 1184; 170 L. Ed. 2d 151. Yet, in *Blinn* the state statute was constitutional under the Fourth Amendment, but if it was analyzed under *Patel* it would be unconstitutional and *vice versa*. *Patel* is now not only authority to challenge the Massachusetts statute in federal court, its holding now puts in jeopardy hotel register inspection laws across the country and virtually all of these laws as will be momentarily demonstrated authorize police inspections and none of these laws mentions warrants or pre-compliance judicial review.

A2. State Statutes, County and City Ordinances Authorize Police Officers to Inspect Hotel Guest Registries Without Providing for Fourth Amendment Pre-Compliance Judicial Review. These Nationally Ubiquitous Laws Which Provide Law Enforcement with a Critical Tool Are Now in Jeopardy of Being Declared Facially Unconstitutional Thus Compelling That Certiorari Be Granted

Attached to this petition at Appendix E is a compilation of 70 state, county and city statutes and ordinances from 26 states which authorize police inspection of hotel registries. Not one of these laws mentions pre-compliance judicial review.[7]

Numerous cities aside from Los Angeles and at least one county within the Ninth Circuit require hotels to maintain guest registries which are subject to police inspection; none of these registries expressly require either police officers to obtain a warrant or specify that the hotel operator is entitled to pre-enforcement judicial review. *See, e.g.*, Alameda County, Cal., App.

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[7] The states, cities and the counties listed at Appendix E are by no means intended to be a comprehensive list of all states, counties or cities which mandate the keeping of hotel guest registries and which also authorize police inspections of those registries. Rather, the appendix is intended simply to be a representative compilation of states, counties and cities, large, medium and small, to illustrate the ubiquitousness of these ordinances.

68; City of Fresno, App. 79-80; City of San Diego, App. 100; City and County of San Francisco, App. 100; City of Las Vegas, App. 85-8; City of Seattle, App. 101-102.

Outside of the Ninth Circuit, not only does the Commonwealth of Massachusetts mandate the keeping of a hotel register which will be subject to inspection by police officers, but so does the state of Maine. App. 66-68.

Cities across the nation outside of the Ninth Circuit have police inspection ordinances similar to the City of Los Angeles. *See, e.g.*, City of Atlanta, Ga., App. 70; City of Baton Rouge, La., App. 71-72; City of Columbia, S.C., App. 74-75; City of Denver, Colo., App. 76-77; City of Indianapolis, Ind., App. 85-86; City of Minneapolis, Minn., App. 88; City of Nashville, Tenn., App. 87; City of Oklahoma City, Okla., App. 92; City of Richmond, Va., App. 96-97; City of San Antonio, Tex., App. 98-100; City of Saint Louis, Mo., App. 97-98; City of Wichita, Kan., App. 107.

Hotel guest registries expressly authorize police officers to combat nuisances and prostitution. Supplemental Excerpts of the Record, 98; App. 98 (Salinas Mun. Code § 21-320 (2013)). These ordinances are also expressly intended to combat illegal gambling and assist in the capture of fugitives. App. 98, 106-107 (Salinas Mun. Code § 21-320 (2013); West Milwaukee Mun. Code § 14-506). Other ordinances expressly mandate (as distinguished from inferentially mandate) that guest registers be made available to federal law enforcement to combat federal crimes, which of course would include terrorism especially in the immediate aftermath of a terrorist attack. App. 77, 93, 103 (East

Peoria Mun. Code § 3-15-13 (2013), Perryville Mun. Code § 9.04.300 (2013), Sparks Mun. Code § 5.52.040).

For those cities located within the Ninth Circuit, since none of these ordinances comply with the pre-compliance requirements of the *Patel* decision they will be in effect facially unconstitutional. Millions of people will be without the protection these ordinances provide.[8] At a national level, the state statutes in Massachusetts and Maine as well as the ordinances across the country are now in constitutional jeopardy because of *Patel's* holding which puts millions of people[9] in jeopardy of losing the protection these laws provide.[10]

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[8] The City's population is approximately 4,000,000 people http://quickfacts.census.gov/qfd/states/06/0644000.html (last visited March 21, 2014).

[9] The population of the Commonwealth of Massachusetts alone is almost 7,000,000 people. http://quickfacts.census.gov/qfd/states/25000.html (last visited Mar. 21, 2014)

[10] Including *Blinn*, there is little case law which has directly addressed the legality of hotel registry inspections, which further speaks to the imperative that certiorari be granted. *See City of Strongsville v. Patel*, 2005-Ohio-620 (2005) [although hotel industry closely regulated, conviction of motel operator's refusal to allow warrantless inspection of motel records by police overturned on as-applied Fourth Amendment challenge on the narrow ground the ordinance was not limited in the time for the inspection]; *Jones v. City of Hitchcock*, 2003 Tex. App. 3353 (2003) [Fourth Amendment facial challenge to trailer park ordinance which mandated that trailer parks keep guest registration information which would be available for inspection and use at all times by law enforcement rejected; trailer parks are closely regulated businesses; the ordinance was limited in scope; and the court

CONCLUSION

Predicated on the foregoing, the City of Los Angeles requests that certiorari be granted.

Respectfully submitted,

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rejected the right to privacy and unreasonable search and seizure claims]; *King v. City of Tulsa*, 415 P.2d 606 (Okla. Crim. App. 1966) [defendant's conviction affirmed for refusing to permit police officer to inspect hotel register without a warrant; the court held the ordinance was a proper exercise of the city's police power]; *Allinder v. City of Homewood*, 254 Ala. 525, 49 So. 2d 108 (1950) (state Supreme Court rejected facial challenge by hotel owner to ordinance which required the keeping of a guest register and to make it available for inspection by a police officer; the ordinance was a valid exercise of the city's police power).

APPENDIX

APPENDIX

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APPENDIX A

FOR PUBLICATION

UNITED STATES COURT OF APPEALS
FOR THE NINTH CIRCUIT

No. 08-56567
D.C. No. 2:05-cv-01571-DSF-AJW

[Filed December 24, 2013]

NARANJIBHAI PATEL; RAMILABEN PATEL,	)
Plaintiffs-Appellants,	)
v.	)
CITY OF LOS ANGELES, a municipal corporation,	)
Defendant-Appellee.	)

OPINION

Appeal from the United States District Court
for the Central District of California
Dale S. Fischer, District Judge, Presiding

Argued and Submitted En Banc
June 24, 2013—Seattle, Washington

Filed December 24, 2013

Before: Alex Kozinski, Chief Judge, and Diarmuid F. O'Scannlain, Raymond C. Fisher, Marsha S. Berzon, Richard C. Tallman, Richard R. Clifton, Consuelo M. Callahan, Milan D. Smith, Jr., Mary H. Murguia, Morgan Christen and Paul J. Watford, Circuit Judges.

Opinion by Judge Watford;
Dissent by Judge Tallman;
Dissent by Judge Clifton

SUMMARY*

Civil Rights

The en banc court reversed the district court's judgment in favor of the City of Los Angeles, and held that Los Angeles Municipal Code § 41.49's requirement that hotel guest records "shall be made available to any officer of the Los Angeles Police Department for inspection" was facially invalid under the Fourth Amendment insofar as it authorized inspections of the records without affording an opportunity to obtain prior judicial review.

Plaintiffs, who are motel owners in Los Angeles, challenged the provision of § 41.49 authorizing warrantless, on-site inspections of hotel guest records by any police officer. The en banc court held that a police officer's non-consensual inspection of hotel guest records under § 41.49 constituted a Fourth Amendment "search." The en banc court also held that even under the more lenient Fourth Amendment principles

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* This summary constitutes no part of the opinion of the court. It has been prepared by court staff for the convenience of the reader.

governing administrative record inspections, § 41.49 was facially invalid. The en banc court concluded that in order for the city to comply with the Fourth Amendment, it must afford hotel operators an opportunity to challenge the reasonableness of the police officer's inspection demand in court before penalties for non-compliance were imposed.

Judge Tallman, joined by Judges O'Scannlain, Clifton, and Callahan, dissented. Judge Tallman dissented from the majority's decision to declare invalid *all* potential searches under the city's ordinance, and he would limit the court's review to searches and seizures that actually took place. Because plaintiffs did not raise an as-applied challenge to the ordinance, Judge Tallman would vacate the district court's judgment and remand for dismissal of the facial challenge.

Judge Clifton, joined by Judges O'Scannlain, Tallman, and Callahan, dissented. Judge Clifton wrote that the majority opinion was wrong because it ignored the facial nature of plaintiffs' challenge to the ordinance and the high bar that must be overcome for a facial challenge to succeed, and failed to establish that a search of records under the ordinance would be unreasonable.

COUNSEL

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OPINION

WATFORD, Circuit Judge:

Los Angeles Municipal Code § 41.49 requires hotel and motel operators to keep records with specified information about their guests. Plaintiffs, motel owners in Los Angeles, challenge a provision of § 41.49 authorizing warrantless, on-site inspections of those records upon the demand of any police officer. We are asked to decide whether this provision is facially invalid under the Fourth Amendment.

I

Section 41.49 requires hotel and motel operators to collect and record detailed information about their guests in either paper or electronic form. The records must contain: the guest's name and address; the number of people in the guest's party; the make, model, and license plate number of the guest's vehicle if the vehicle will be parked on hotel property; the guest's date and time of arrival and scheduled date of departure; the room number assigned to the guest; the rate charged and the amount collected for the room; and the method of payment. L.A. Mun. Code § 41.49(2)(a). For cash-paying and walk-in guests, as well as any guest who rents a room for less than twelve hours, the records must also contain the number and expiration date of the identification document the guest presented when checking in. § 41.49(4). For guests who check in using an electronic kiosk, hotel operators must record the guest's name, reservation and credit card information, and the room number assigned to the

guest. § 41.49(2)(b). These records must be "kept on the hotel premises in the guest reception or guest check-in area or in an office adjacent to that area" for a period of 90 days. § 41.49(3)(a).

Plaintiffs do not challenge these requirements. But they do challenge § 41.49's warrantless inspection requirement, which states that hotel guest records "shall be made available to any officer of the Los Angeles Police Department for inspection," provided that, "[w]henever possible, the inspection shall be conducted at a time and in a manner that minimizes any interference with the operation of the business." *Id.*[1] The city stipulated that this provision authorizes police officers to inspect hotel guest records at any time without consent or a search warrant. Failure to comply with an officer's inspection demand is a misdemeanor, punishable by up to six months in jail and a $1000 fine. L.A. Mun. Code § 11.00(m).

Plaintiffs have been and will continue to be subjected to warrantless record inspections under § 41.49. They filed this action under 42 U.S.C. § 1983 seeking declaratory and injunctive relief barring

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[1] Section 41.49(3)(a) provides in full:

> The record shall be kept on the hotel premises in the guest reception or guest check-in area or in an office adjacent to that area. The record shall be maintained at that location on the hotel premises for a period of 90 days from and after the date of the last entry in the record and shall be made available to any officer of the Los Angeles Police Department for inspection. Whenever possible, the inspection shall be conducted at a time and in a manner that minimizes any interference with the operation of the business.

continued enforcement of § 41.49's warrantless inspection provision, on the ground that it is facially invalid under the Fourth Amendment. Following a bench trial, the district court rejected plaintiffs' facial challenge and entered judgment for the City of Los Angeles.

II

The first question raised by plaintiffs' facial challenge is whether a police officer's non-consensual inspection of hotel guest records under § 41.49 constitutes a Fourth Amendment "search." We have little difficulty concluding that it does.

The Fourth Amendment protects the right of the people to be secure in their "persons, houses, papers, and effects" against unreasonable searches and seizures. U.S. Const. amend. IV A search occurs for Fourth Amendment purposes when the government physically intrudes upon one of these enumerated areas, or invades a protected privacy interest, for the purpose of obtaining information. *United States v. Jones*, 132 S. Ct. 945, 949–51 (2012); *Katz v. United States*, 389 U.S. 347, 360–61 (1967) (Harlan, J., concurring). The "papers" protected by the Fourth Amendment include business records like those at issue here. *See Hale v. Henkel*, 201 U.S. 43, 76–77 (1906).

Record inspections under § 41.49 involve both a physical intrusion upon a hotel's papers and an invasion of the hotel's protected privacy interest in those papers, for essentially the same reasons. "One of the main rights attaching to property is the right to exclude others, and one who owns or lawfully possesses

or controls property will in all likelihood have a legitimate expectation of privacy by virtue of this right to exclude." *Rakas v. Illinois*, 439 U.S. 128, 144 n.12 (1978) (citation omitted). The business records covered by § 41.49 are the hotel's private property, and the hotel therefore has both a possessory and an ownership interest in the records. By virtue of those property-based interests, the hotel has the right to exclude others from prying into the contents of its records, which is also the source of its expectation of privacy in the records. *Cf. Florida v. Jardines*, 133 S. Ct. 1409, 1418–19 (2013) (Kagan, J., concurring). That expectation of privacy is one society deems reasonable because businesses do not ordinarily disclose, and are not expected to disclose, the kind of commercially sensitive information contained in the records—e.g., customer lists, pricing practices, and occupancy rates. The hotel retains that expectation of privacy notwithstanding the fact that the records are required to be kept by law. *See McLaughlin v. Kings Island, Div. of Taft Broad. Co.*, 849 F.2d 990, 995–96 (6th Cir. 1988); *Brock v. Emerson Elec. Co.*, 834 F.2d 994, 996 (11th Cir. 1987).

The hotel's property and privacy interests are more than sufficient to trigger Fourth Amendment protection. As to the property-based rationale for our holding, which is grounded in a century-old line of Supreme Court precedent beginning with *Hale*, 201 U.S. at 76–77, the dissent is in complete agreement. *See* Clifton Dissent at 25. As to the privacy-based rationale, the dissent asserts that plaintiffs were required to prove, as a factual matter, that their business records are subject to a reasonable expectation of privacy. Clifton Dissent at 29, 30–31. We

do not believe business owners are required to prove that proposition, any more than homeowners are required to prove that papers stored in a desk drawer are subject to a reasonable expectation of privacy. So long as a business's records are "private," as the Court held in *Hale*, 201 U.S. at 76, they fall within the scope of the "papers" protected by the Fourth Amendment.

No one contests here that plaintiffs' hotel records are in fact private. If the records were "publicly accessible," as the dissent posits, Clifton Dissent at 31, it is true they would not be protected by the Fourth Amendment, since "[w]hat a person knowingly exposes to the public, even in his own home or office, is not a subject of Fourth Amendment protection." *Katz*, 389 U.S. at 351. But, by the same measure, if the records were publicly accessible, the police of course would not need to rely on § 41.49 to gain access to them.

That the hotel records at issue contain information mainly about the hotel's guests does not strip them of constitutional protection. To be sure, the *guests* lack any privacy interest of their own in the hotel's records. *United States v. Cormier*, 220 F.3d 1103, 1108 (9th Cir. 2000); *see United States v. Miller*, 425 U.S. 435, 440 (1976). But that is because the records belong to the hotel, not the guest, and the records contain information that the guests have voluntarily disclosed to the hotel. *Cormier*, 220 F.3d at 1108. It may be the case, as the dissent speculates, that the hotel in *Cormier* voluntarily consented to an inspection of its guest records. *See* Clifton Dissent at 29. But that does not support the dissent's contention that hotels generally lack an expectation of privacy in such records. Otherwise, the fact that a defendant in one of

our published decisions voluntarily consented to the search of his home would establish that the rest of us lack an expectation of privacy in our own homes.

A police officer's non-consensual inspection of hotel guest records plainly constitutes a "search" under either the property-based approach of *Jones* or the privacy-based approach of *Katz*. Such inspections involve both a physical intrusion upon the hotel's private papers and an invasion of the hotel's protected privacy interest in those papers for the purpose of obtaining information. *See Jones*, 132 S. Ct. at 951 n.5. Whether the officers rifle through the records in paper form, or view the records on a computer screen, they are doing so to obtain the information contained in the records. That the inspection may disclose "nothing of any great personal value" to the hotel—on the theory, for example, that the records contain "just" the hotel's customer list—is of no consequence. *Arizona v. Hicks*, 480 U.S. 321, 325 (1987). "A search is a search, even if it happens to disclose nothing but the bottom of a turntable." *Id.*

III

The question we must next decide is whether the searches authorized by § 41.49 are reasonable. Ordinarily, to answer that question, we would balance "the need to search against the invasion which the search entails." *Camara v. Mun. Court*, 387 U.S. 523, 537 (1967); *see Maryland v. King*, 133 S. Ct. 1958, 1970 (2013). Here, however, that balance has already been struck. The Supreme Court has made clear that, to be reasonable, an administrative record-inspection scheme need not require issuance of a search warrant, but it must at a minimum afford an opportunity for

pre-compliance judicial review, an element that § 41.49 lacks.

We will assume, without deciding, that § 41.49 is in fact intended to authorize administrative record inspections, rather than "searches for evidence of crime," which would ordinarily require a warrant. *Michigan v. Tyler*, 436 U.S. 499, 511–12 (1978). The city defends § 41.49 as a nuisance abatement measure designed to deter drug dealing and prostitution, on the theory that those who would be inclined to use hotels to facilitate their illicit activities will be less inclined to do so if they know that hotel operators must collect—and make available to the police—information identifying each of their guests. Plaintiffs do not contest this characterization of § 41.49, and we need not question it to resolve this case.

We will also assume that § 41.49 is intended to authorize access only to the hotel guest records, rather than to non-public areas of the hotel's premises. When the government seeks access to non-public areas of a business to enforce health and safety regulations, an administrative search warrant is generally required before that greater level of intrusion is permitted. *See Donovan v. Lone Steer, Inc.*, 464 U.S. 408, 414 (1984); *See v. City of Seattle*, 387 U.S. 541, 545 (1967). Section 41.49 could be read as authorizing inspections of hotel guest records, at least in some circumstances, in "an office adjacent to" the guest check-in area. L.A. Mun. Code § 41.49(3)(a). If that office were not open to the public, officers could not insist on conducting the inspection there without an administrative search warrant. *See Lone Steer*, 464 U.S. at 414; *See*, 387 U.S. at 545. As a general rule, however, § 41.49 appears to

contemplate record inspections occurring in the "guest reception or guest check-in area" of the hotel, areas which presumably are open to the public. L.A. Mun. Code § 41.49(3)(a). Given our disposition, we need not decide whether record inspections in an area of a business open to the public, such as a hotel lobby, would require an administrative search warrant.

With these assumptions in mind, which give the city the benefit of the doubt at each turn, we will apply the Fourth Amendment principles governing administrative record inspections, rather than those that apply when the government searches for evidence of a crime or conducts administrative searches of non-public areas of a business. *See Tyler*, 436 U.S. at 511–12; *Marshall v. Barlow's, Inc.*, 436 U.S. 307, 320–21 (1978). Even under the more lenient Fourth Amendment principles governing administrative record inspections, § 41.49 is facially invalid.

The government may require businesses to maintain records and make them available for routine inspection when necessary to further a legitimate regulatory interest. *See California Bankers Ass'n v. Shultz*, 416 U.S. 21, 45–46 (1974); *Kings Island*, 849 F.2d at 992–93. But the Fourth Amendment places limits on the government's authority in this regard. *See Oklahoma Press Pub. Co. v. Walling*, 327 U.S. 186, 208–09 (1945). The government may ordinarily compel the inspection of business records only through an inspection demand "sufficiently limited in scope, relevant in purpose, and specific in directive so that compliance will not be unreasonably burdensome." *See*, 387 U.S. at 544. Section 41.49 appears to satisfy this Fourth Amendment prerequisite by adequately

specifying (and limiting the scope of) the records subject to inspection. In addition, however, the demand to inspect "may not be made and enforced by the inspector in the field." *Id.* at 544–45. The party subject to the demand must be afforded an opportunity to "obtain judicial review of the reasonableness of the demand prior to suffering penalties for refusing to comply." *Id.* at 545; *see also Lone Steer*, 464 U.S. at 415.

Section 41.49 lacks this essential procedural safeguard against arbitrary or abusive inspection demands. As presently drafted, § 41.49 provides no opportunity for pre-compliance judicial review of an officer's demand to inspect a hotel's guest records. If the hotel operator refuses the officer's demand, she may be found guilty without more of a misdemeanor, punishable by up to six months in jail and a $1000 fine. *See* L.A. Mun. Code § 11.00(m). Hotel operators are thus subject to the "unbridled discretion" of officers in the field, who are free to choose whom to inspect, when to inspect, and the frequency with which those inspections occur. *See Barlow's*, 436 U.S. at 323. Only by refusing the officer's inspection demand and risking a criminal conviction may a hotel operator challenge the reasonableness of the officer's decision to inspect. *See Camara*, 387 U.S. at 532. To comply with the Fourth Amendment, the city must afford hotel operators an opportunity to challenge the reasonableness of the inspection demand in court before penalties for non-compliance are imposed. *See Lone Steer*, 464 U.S. at 415; *See*, 387 U.S. at 545; *Kings*

Island, 849 F.2d at 996; *Emerson Elec.*, 834 F.2d at 997.[2]

The dissent is certainly correct that "[t]he lack of pre-compliance judicial review does not necessarily make a search unreasonable under the Fourth Amendment." Clifton Dissent at 27. But it *does* render unreasonable the particular searches at issue here—administrative inspections of business records in industries that are not closely regulated. The dissent never refutes that point. It merely notes that pre-compliance judicial review is not required for other types of searches that § 41.49 does not purport to authorize, such as automobile searches or "stop and frisks." *Id.* That observation has no relevance to the Fourth Amendment issue raised by this case.

IV

We hold that § 41.49's requirement that hotel guest records "shall be made available to any officer of the Los Angeles Police Department for inspection" is facially invalid under the Fourth Amendment insofar as it authorizes inspections of those records without affording an opportunity to "obtain judicial review of the reasonableness of the demand prior to suffering penalties for refusing to comply." *See*, 387 U.S. at 545.

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[2] Unannounced inspections without an opportunity for pre-compliance judicial review may be reasonable in certain closely regulated industries, such as mining and firearms. *See, e.g.*, *New York v. Burger*, 482 U.S. 691, 702 (1987). As the district court correctly concluded, however, no serious argument can be made that the hotel industry has been subjected to the kind of pervasive regulation that would qualify it for treatment under the *Burger* line of cases. *See Barlow's*, 436 U.S. at 313–14.

Because this procedural deficiency affects the validity of all searches authorized by § 41.49(3)(a), there are no circumstances in which the record-inspection provision may be constitutionally applied. *See United States v. Salerno*, 481 U.S. 739, 745 (1987). Facial invalidation of the provision, as plaintiffs have requested, is therefore appropriate. *See Barlow's*, 436 U.S. at 325; *Kings Island*, 849 F.2d at 997.

That conclusion is not undermined by the dissent's observation, *see* Tallman Dissent at 17, that officers may seek to inspect hotel guest records based on a source of authority other than § 41.49. If "exigent circumstances" exist to justify a non-consensual inspection of hotel guest records, for example, officers may conduct such a search in compliance with the Fourth Amendment whether § 41.49 is on the books or not. Nor is it relevant that plaintiffs have not yet "suffered a penalty for refusing to comply." Tallman Dissent at 22. "The forbearance of a field officer in graciously declining to propose a penalty"—thus far—does not cure the constitutional defect in § 41.49's administrative record-inspection scheme. *Emerson Elec.*, 834 F.2d at 997.

REVERSED and REMANDED.

TALLMAN, Circuit Judge, with whom Circuit Judges O'SCANNLAIN, CLIFTON, and CALLAHAN join, dissenting:

The Fourth Amendment to our Constitution provides that "[t]he right of the people to be secure in their persons, houses, papers, and effects, against unreasonable searches and seizures, shall not be

violated. " U.S. Const., amend. IV The Amendment has always prohibited specific government conduct—"unreasonable searches and seizures"—not legislation that could potentially permit such conduct. It is for this reason that the Supreme Court has held that "[t]he constitutional validity of a warrantless search is pre-eminently the sort of question which can only be decided in the concrete factual context of the individual case." *Sibron v. New York*, 392 U.S. 40, 59 (1968).

The Patels nonetheless ask us to declare facially invalid under the Fourth Amendment a city ordinance that does not address the procedures the police must follow before entering a hotel to request the guest registers that hotels must keep. The ordinance says nothing of warrants, much less consent, exigencies, or any other recognized exception to the warrant requirement. We only know from the face of the statute that when the police do request the register, however they make that request, the hotel owner must provide it.

The Patels may be right in asserting that as a practical matter the Los Angeles Police Department has *applied* the ordinance to undertake searches that violate the Fourth Amendment. In that case, the Patels should have little problem challenging such a search on the facts of a particular search itself. They made such a claim when they filed their lawsuit but dropped it before trial. The district court looked at the city ordinance and saw nothing on its face suggesting it was unconstitutional in all of its applications. Now on appeal, the Patels ask us to assume the exercise of analyzing *all* potential searches that *might be*

conducted pursuant to the ordinance in order to declare it deficient. We should decline the Patels' invitation because the Supreme Court has told us to avoid the exercise altogether. My colleagues, though, have taken the bait and issued what amounts to no more than an advisory opinion. I respectfully dissent.

I

In *Sibron v. New York*, the New York state legislature had enacted a statute allowing a police officer, with "reasonable suspicion," to "stop any person," "demand" explanations, and "search such person for a dangerous weapon." 392 U.S. at 43–44. Two defendants sought suppression of evidence discovered pursuant to such searches, and they asked the Supreme Court to strike down the state statute as facially unconstitutional under the Fourth Amendment. *Id.* at 44. On the same day the Supreme Court established the constitutional standard for "stop-and-frisks" in *Terry v. Ohio*, 392 U.S. 1 (1968), the Court declined to address the facial challenge to the statute in *Sibron*.

The Court explained that federal courts should refuse "to be drawn into what we view as the abstract and unproductive exercise of laying the extraordinarily elastic categories of [a statute] next to the categories of the Fourth Amendment in an effort to determine whether the two are in some sense compatible." *Sibron*, 392 U.S. at 59. Rather, we should "confine our review instead to the reasonableness of the searches and seizures" that have actually taken place. *Id.* at 62.

The *Sibron* Court reasoned that when a statute's terms "are susceptible of a wide variety of

interpretations," *id.* at 60, we can only determine if the government has violated Fourth Amendment rights by analyzing the concrete facts in which the statute was applied. "The constitutional point with respect to a statute of this peculiar sort is not so much the language employed as the conduct it authorizes." *Id.* at 61–62 (citation and internal quotation marks omitted). Here, although counsel represented at argument that unconstitutional searches have occurred at the Patels' motel, the record is bereft of any details to tell us what happened when the ordinance was invoked.

I am at a loss to understand the Patels' decision to drop the as-applied challenge they raised in their original complaint. But their facial challenge leaves us with insufficient facts regarding the unconstitutional conduct they allege has occurred. It instead asks us to partake in the gymnastics of the hypothetical, focusing on the "language employed" instead of the "conduct [the ordinance] authorizes." *Id.*

The difficulty with this case arises from the disconnect between the language employed in the statute and the conduct the majority concludes the ordinance authorizes. The majority opinion is rife with assumptions about the police conduct that must occur for the ordinance to be applied. To begin, the majority's analysis starts with the assumption that "§ 41.49 authoriz[es] warrantless inspections." Maj. Op. at 4. But it seems plain from the face of the statute that the ordinance would apply to hoteliers with equal force if Los Angeles police officers arrived at a hotel with a legitimate search warrant and the hotelier refused to produce the register. I have always understood the rule

to be that a statute survives a facial challenge if a court can find any circumstance in which it could constitutionally be applied. *See Wash. State Grange v. Wash. State Republican Party*, 552 U.S. 442, 449 (2008) (holding that a facial challenge "can only succeed" if "no set of circumstances exists under which the [law] would be valid"). The majority does not even acknowledge this rule of constitutional adjudication.

The plaintiffs went to trial solely on a facial challenge to the statute, which by its nature requires us to consider only the statute's language. But even if, as the majority suggests, *all* searches authorized by the ordinance were without warrant and consent—which the statute clearly does not dictate—the majority has still not accounted for "exigent circumstances" that would allow the police to request the guest register without a warrant *or* consent. *See Kentucky v. King*, 131 S. Ct. 1849, 1858 (2011) ("[W]arrantless searches are allowed when the circumstances make it reasonable, within the meaning of the Fourth Amendment, to dispense with the warrant requirement."). Additionally, the police could request the register under their community care-taking exception; perhaps police might be on the premises to locate a suicidal person whose worried family has asked police to check on his welfare. These would appear to be at least two "set[s] of circumstances under which the [law] would be valid." *Wash. State Grange*, 552 U.S. at 449.

But such important constitutional questions should not rise and fall on the vagaries of judicial imaginations. As in *Sibron*, "[o]ur constitutional inquiry would not be furthered here by an attempt to

pronounce judgment on the words of the statute." 392 U.S. at 62. Even after considering the stipulation that the Patels have been subject to warrantless searches under the ordinance, we have no concrete facts to analyze the circumstances of each individual search. And even if we did have those facts, the Patels have made the tactical litigation decision to withdraw any challenge to those searches. They leave us with no evidence to prove that *all* requests made under the ordinance *must* violate the Fourth Amendment. The majority's decision to nonetheless entertain the facial challenge eschews Supreme Court guidance to the contrary.

II

The majority ignores *Sibron* entirely and takes an improperly narrow view of what the statutory text authorizes. The ordinance, *on its face*, provides only that:

> [The register] shall be made available to any officer of the Los Angeles Police Department for inspection. Whenever possible, the inspection shall be conducted at a time and in a manner that minimizes any interference with the operation of the business.

L.A. Mun. Code § 41.49(3)(a). According to the ordinance's language, if the police request the guest register, the hotel owner must provide it. The ordinance does not claim to alter the LAPD's constitutional responsibility to adhere to Fourth Amendment safeguards when making any demand for information. We cannot presume that police have

violated the Fourth Amendment without any facts with which to make that determination.

It is clear that when the majority reads the ordinance, it engrafts into it language that is not there:

> [The register] shall be made available to any officer of the Los Angeles Police Department for inspection, ***and the police may conduct such an inspection without a warrant and without consent or any other delineated exception to the warrant requirement.*** Whenever possible, the inspection shall be conducted at a time and in a manner that minimizes any interference with the operation of the business.

I stress again that the majority starts its analysis with the assumption that the ordinance "authoriz[es] warrantless inspections." Maj. Op. at 4. This reading, enhanced by an imaginary judicial graft on the text, raises a critical difference from the ordinance's actual language as currently written. If the ordinance were phrased in a manner that would eliminate the warrant requirement entirely, it would implicate Supreme Court precedent suggesting that a statute may not alter the procedures for obtaining a warrant. Most notably, in *Berger v. New York*, 388 U.S. 41, 56–58 (1967), the Court struck down a New York statute allowing the state to obtain a surveillance warrant without probable cause or even particularity as to what the police expected to obtain with the warrant. The Court held that New York's attempt to alter the procedures for the issuance of a warrant was "offensive" to the Warrant Clause of the Fourth Amendment. *Id.* at 58–59.

The majority instead takes a course similar to the Supreme Court in *Marshall v. Barlow's, Inc.*, 436 U.S. 307 (1978), but it does not account for the critical difference between *Barlow's* and this case. In *Barlow's*, the Court analyzed—in the course of an as-applied challenge based on an actual attempted search—Section 8(a) of the Occupational Safety and Health Act (OSHA), which permitted the Department of Labor:

> (1) *to enter without delay* and at reasonable times any factory, plant, establishment, construction site, or other area, workplace or environment where work is performed by an employee of an employer; and (2) *to inspect and investigate* during regular working hours and at other reasonable times, and within reasonable limits and in a reasonable manner, any such place of employment and all pertinent conditions, structures, machines, apparatus, devices, equipment, and materials therein, and to question privately any such employer, owner, operator, agent, or employee.

Id. at 309 n.1 (emphasis added).[1]

Unlike the Patels, the *Barlow's* plaintiff sought to enjoin the statute as it was applied to him—seeking declaratory relief that he did not have to comply with a court order requiring the plaintiff to allow an inspection by an Occupational Safety and Health

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[1] The language of Section 8(a) actually authorizes specific government conduct, unlike the ordinance, which only imposes a responsibility on a hotelier. The majority ignores this critical difference.

officer. *Barlow's, Inc. v. Usery*, 424 F. Supp. 437, 438–39 (D. Idaho 1976). Through the factual development of his as-applied challenge, it became "undisputed that [the officer] did not have any cause, probable or otherwise, to believe a violation existed nor was he in possession of any complaints by any employee of Barlow's, Inc." *Id.* It was also undisputed that the officer did not seek or possess a warrant for the inspection. *Id.* at 438.

Before the Supreme Court, the government did not attempt to argue that it could justify the search of the plaintiff under any exception to the warrant requirement. Instead, it argued that all warrantless searches conducted pursuant to Section 8(a) of OSHA should be deemed reasonable—under a new exception the government asked the Supreme Court to announce in *Barlow's* itself. *Barlow's*, 436 U.S. at 315–16 ("[The Secretary] suggests that only a decision exempting OSHA inspections from the Warrant Clause would give 'full recognition to the competing public and private interests here at stake.'"). Not surprisingly, the Supreme Court declined the government's novel request.

Importantly, the Court did not strike down Section 8(a) of OSHA altogether. Rather, based on the concrete factual situation that arose from the as-applied challenge—specifically, because the government had conceded that no warrant exception existed for the search of the plaintiff's business—the Court held that the statute was unconstitutional "insofar as it purports to authorize inspections *without warrant or its equivalent*." *Id.* at 325 (emphasis added). As the Court noted, the injunction "should not be understood

to forbid the Secretary from exercising the inspection authority conferred by § 8 pursuant to regulations and judicial process that satisfy the Fourth Amendment." *Id.* at 325 n.23. Therefore, a search under Section 8(a) would still survive if the government obtained a warrant or could meet an exception to the warrant requirement that would serve as a warrant's "equivalent."

The majority appears to believe it is following the lead of *Barlow's* when it strikes down the ordinance "insofar as it authorizes inspections of those records without affording an opportunity to 'obtain judicial review of the reasonableness of the demand prior to suffering penalties for refusing to comply.'" Maj. Op. at 12–13. But the record, unlike in *Barlow's*, is totally bereft of facts to support the majority's assumption that the statute is actually being applied in that manner. The Patels put forth no evidence at trial demonstrating that they (or any other hotelier, for that matter) have not had an opportunity to obtain judicial review of any request for guest registers, nor have they shown that *any* hotelier has suffered a penalty for refusing to comply. The majority simply lacks the necessary factual predicate to support its conclusion.

Instead we are left with an advisory opinion that engages in the folly *Sibron* warned us to avoid.[2] The

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[2] "[A]s-applied challenges are the basic building blocks of constitutional adjudication." *Gonzales v. Carhart*, 550 U.S. 124, 168 (2007). It is no surprise, then, that the majority's opinion relies entirely on Supreme Court cases involving them. *See Donovan v. Lone Steer, Inc.*, 464 U.S. 408, 412–14 (1984); *Barlow's*, 436 U.S. at 320–21; *See v. City of Seattle*, 387 U.S. 541, 545–46 (1967); *Camara v. Mun. Ct.*, 387 U.S. 523, 540 (1967). In each of those

majority must begin with an assumption—that the ordinance authorizes only warrantless searches—unsupported by the face of the statute. Then, by cabining its analysis to only whether a search meets one exception for certain administrative inspections, the majority refuses to acknowledge that the ordinance may be "susceptible of a wide variety of interpretations." *Sibron*, 392 U.S. at 60. The majority's ultimate conclusion—that the ordinance is unconstitutional only insofar as it authorizes conduct that the plaintiffs have never proven actually occurred—reveals why "[o]ur constitutional inquiry would not be furthered here by an attempt to pronounce judgment on the words of the statute. We must confine our review instead to the reasonableness of the searches and seizures" that actually took place. *Id.* at 62.

Because the Patels intentionally declined to challenge such actual searches, we should vacate the judgment and remand so the district court may dismiss the facial challenge under *Sibron*. If the Patels are truly subject to searches without a warrant, and the police have no valid reason to circumvent the warrant requirement—which may very well be the case—then the Patels can raise an as-applied challenge to any City attempt to punish them. *See Camara*, 387 U.S. at 540. Because the majority has improperly engaged in this "abstract and unproductive exercise," *Sibron*, 392 U.S. at 59, I respectfully dissent.

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cases, the Court analyzed whether specific government conduct was unconstitutional, not whether the mere language employed in a statute or regulation was invalid. In this case, we do not have any specific government conduct to adjudicate.

CLIFTON, Circuit Judge, with whom Circuit Judges O'SCANNLAIN, TALLMAN, and CALLAHAN join, dissenting:

The majority opinion is wrong in two different ways. First, it ignores the facial nature of Plaintiffs' challenge to the ordinance and the very high bar that must be overcome for a facial challenge to succeed. Second, it fails to establish that a search of records under the ordinance would be unreasonable, the ultimate standard imposed under the Fourth Amendment. Instead, to the extent that it deals with the issue at all, it simply accepts Plaintiffs' assertion to that effect, supported by no evidence whatsoever.

I. The Nature of a Facial Challenge

Judge Tallman is correct that the validity of a warrantless search should generally be decided in the concrete factual context of an as-applied challenge. *See Sibron v. New York*, 392 U.S. 40, 59 (1968). I join his opinion.

Plaintiffs' facial challenge also fails on the merits. A facial challenge is "the most difficult challenge to mount successfully, since the challenger must establish that no set of circumstances exists under which the Act would be valid." *United States v. Salerno*, 481 U.S. 739, 745 (1987); *see Wash. State Grange v. Wash. State Republican Party*, 552 U.S. 442, 449 (2008) (explaining that a facial challenge fails unless "the law is unconstitutional in all of its applications"). That the ordinance might operate unconstitutionally under some circumstances is not enough to render it invalid against a facial challenge.

II. The Reasonableness of the Search

The majority opinion starts by concluding that a police officer's inspection of hotel guest records under the ordinance is a "search" for purposes of the Fourth Amendment. I agree.

Prior to the Supreme Court's decision in *Jones v. United States*, __ U.S. ___, 132 S. Ct. 945 (2012), the issues of whether a given intrusion constituted a "search" and whether that intrusion was "unreasonable" were often merged into a single discussion, considering whether there was a reasonable expectation of privacy that deserved protection. *Jones* made clear that the application of the Fourth Amendment was not limited to circumstances involving a reasonable expectation of privacy. *Id.* at 949–51. The Fourth Amendment applies to the intrusion here, based on what the majority opinion has termed the property-based rationale. That is true whether or not hotels have a reasonable expectation of privacy in guest registers.

The conclusion that the Fourth Amendment applies "is the beginning point, not the end of the analysis," however, as the Supreme Court recently reiterated in *Maryland v. King*, __ U.S. ___, 133 S. Ct. 1958, 1969 (2013), a decision handed down after its decision in *Jones*. "[T]he ultimate measure of the constitutionality of a governmental search is 'reasonableness.'" *King*, 133 S. Ct. at 1969 (quoting *Vernonia School Dist. 47J v. Acton*, 515 U.S. 646, 652 (1995)); *see also Soldal v. Cook Cnty.*, 506 U.S. 56, 71 (1992) (stating that "reasonableness is still the ultimate standard under the Fourth Amendment") (internal quotation marks omitted). Thus in *King* the Court concluded that the

practice of gathering DNA samples from arrestees by buccal swabs was not unreasonable. It noted that although the Fourth Amendment may often demand that the government have individualized suspicion, a warrant, or both before an intrusion, the Court has imposed "no irreducible requirement[s]" for a reasonable search or seizure. *See King*, 133 S. Ct. at 1969.

The majority opinion appears to agree that it must decide whether the search authorized by the ordinance is reasonable. It even acknowledges, at 9, that "[o]rdinarily" a decision would require a balancing of factors to support the conclusion that the inspection here is unreasonable. But it does not undertake such a balancing in its section III.

Instead, the majority opinion contends, at 9, that the "balance has already been struck." It identifies the absence of pre-compliance judicial review as a fatal flaw in the ordinance because, it asserts, at 9, that pre-compliance judicial review is an absolute requirement for any and all business record inspection systems. Because this ordinance does not provide for pre-compliance judicial review before a hotel will be called upon to make the guest information available, the majority opinion concludes that it must violate the Fourth Amendment.

The majority opinion's reasoning misses an important step. The absence of judicial review establishes only that the ordinance might not qualify for the recognized exception for administrative subpoenas or inspections. *See Oklahoma Press Pub. Co. v. Walling*, 327 U.S. 186, 208–09 (1946) (discussing administrative subpoenas); *See v. City of Seattle*, 387

U.S. 541, 544–45 (1967) (discussing administrative inspections); *see also United States v. Golden Valley Elec. Ass'n*, 689 F.3d 1108, 1113, 1115–16 (9th Cir. 2012). That is not the only exception to the warrant requirement recognized under the Fourth Amendment, let alone the only basis for upholding a warrantless search on the ground that it was not unreasonable.

There is, for instance, no provision for a pre-compliance judicial review before a "Terry stop" or a "stop and frisk" under *Terry v. Ohio*, 392 U.S. 1, 22–24 (1968). When a police officer proposes to stop and frisk a suspect, the suspect is not allowed to defer the frisk until after it can be challenged in court. Nor is there such a provision for a warrantless search of an automobile, *United States v. Brooks*, 610 F.3d 1186, 1193–94 (9th Cir. 2010), or any other search under the exigent circumstances exception to the Fourth Amendment's warrant requirement, *Sims v. Stanton*, 706 F.3d 954, 960–61 (9th Cir. 2013).

The lack of pre-compliance judicial review does not necessarily make a search unreasonable under the Fourth Amendment. The majority concedes that fact, at 12, but the lack of pre-compliance judicial review is all the majority opinion discusses to conclude that the a search under the ordinance is always unreasonable.

The majority opinion's reasoning is similar to the following logic: (1) some cars are white, (2) what Mary is driving is not white, (3) therefore, Mary is not driving a car. Put that way, the logical fallacy is obvious – Mary might be driving a red car. And the inspection provided under this ordinance might be reasonable under the Fourth Amendment for reasons

other than the recognized exception for administrative inspections.

The most that the majority opinion has established is that an inspection of guest registry information under the ordinance might not qualify under the established administrative subpoena exception. But that is not the ground upon which the district court concluded that Plaintiffs' facial challenge failed. Instead, it took on the harder question and concluded that the Plaintiffs failed to demonstrate that they and hotel owners in general had a legitimate privacy interest in guest registry information such that the ordinance was facially unreasonable. By concluding that a search under the ordinance is necessarily unreasonable because it does not fit the administrative subpoena exception, the majority opinion has knocked over a straw man.

The harder question of whether a search under the ordinance would be unreasonable in all circumstances requires consideration of the nature of the intrusion, among other things. The majority opinion does not entirely ignore that question, but it discusses it only in answering the easy question – whether an inspection of a guest registry under the ordinance constitutes a search – and not the hard one – whether that search is unreasonable in all circumstances.

The majority opinion asserts, at 7, that Plaintiffs are not required to prove that their business records are necessarily subject to an expectation of privacy, because they are papers protected by the Fourth Amendment. But that, too, answers only the easy question, not the hard one. It does not establish that a

search of those papers under the ordinance would be unreasonable in all circumstances.

Plaintiffs may have a subjective expectation of privacy in their guest registry and may keep that information confidential, as the majority opinion asserts, though there is no proof of that in the record. Plaintiffs have brought a facial challenge, however, so the relevant question is not simply how these individual Plaintiffs treat their guest registry but how that information is treated by hotels generally. The majority opinion cites nothing to support the factual proposition that hotels generally treat such information as private. There is none in the record.

Moreover, even if the Plaintiffs had presented evidence that hotels generally treated their guest registers as confidential, that does not mean that the expectation of privacy is constitutionally protected. Establishing a subjective expectation of privacy does not end the question under the Fourth Amendment. *United States v. Sandoval*, 200 F.3d 659, 660 (9th Cir. 2000). Society must also recognize the expectation of privacy as reasonable. *Id.*; *United States v. Gonzalez*, 328 F.3d 543, 546–47 (9th Cir. 2003). The majority opinion does not discuss that question at all.

We have already held, as the majority opinion acknowledges, at 8, that hotel guests do not have a reasonable expectation of privacy in guest registry information once they have provided it to a hotel operator. *United States v. Cormier*, 220 F.3d 1103, 1108 (9th Cir. 2000). In *Cormier*, we noted that the information at issue there, the guest's name and room number, was not "highly personal information." *Id.* A

guest's information is even less personal to the hotel than it is to the guest.

Nonetheless, the majority opinion asserts, at 7, that guest registry information is "commercially sensitive." Nothing is cited to support that assertion. The majority opinion expects us to accept it because it says so.

But that is obviously not always true. There are hotels that voluntarily share information about guests with law enforcement without being served with a warrant and without the duress of this ordinance. Unlike the majority opinion, I do not require you to take my word for it. Take a look at our description of what happened in the *Cormier* case. A police detective went to a motel "located in a traditionally high-crime area" to "obtain the motel's guest registration records," and he got them. 220 F.3d at 1106. There is no mention of a warrant, and if there had been one, Cormier could not have objected to the seizure of the registration records in the first place, so it is safe to infer that there was none. The motel simply gave the registration records to the police detective.

That does not seem surprising to me, and I suspect that it is not such a rare occurrence. More to the point, though, it contradicts the majority opinion's premise that hotels closely guard their registries to protect "commercially sensitive" information and that an inspection under the ordinance would always be unreasonably intrusive. The record contains no evidence to support either proposition.

The majority opinion answers, at 8, by noting that the hotel in the *Cormier* case is just one hotel, and that its willingness to turn records over to the police does

not establish that hotels generally lack an expectation of privacy. But that answer misses the mark in two different ways. One is that Plaintiffs and the majority opinion cite nothing to support their view – my one beats their none. More importantly, the majority opinion forgets that Plaintiffs have presented a facial challenge. Plaintiffs cannot prevail based on their own personal expectations of privacy. They have to demonstrate that there are no circumstances in which the ordinance would be valid, and if there are hotels that do not view guest registry information as private to themselves, the inspection permitted by the ordinance may not be unreasonable.

There can, in fact, be no support in the record for the majority opinion's assertion because Plaintiffs presented no evidence about the treatment of guest registry information. We cannot simply assume that hotels in general expect information contained in their guest registers to be private. *See Salerno*, 481 U.S. at 745 (explaining that a facial challenge fails unless "no set of circumstances exist under which the Act would be valid"); *see also United States v. Mendoza*, 438 F.3d 792, 795 (7th Cir. 2006) (explaining that "without an affidavit or testimony from the defendant, it is almost impossible to find a privacy interest" to support standing) (internal quotation marks omitted). The majority opinion's construction is missing a foundation.

Under the ordinance, a guest registry may be a publicly accessible book in a publicly accessible hotel lobby. Society likely does not recognize a legitimate expectation of privacy in information kept in a manner so easily accessible to anyone entering a hotel. *See Vernonia School Dist. 47J v. Acton*, 515 U.S. 646, 657

(1995) (explaining that "[l]egitimate privacy expectations" are diminished in "[p]ublic school locker rooms" because they "are not notable for the privacy they afford"). In some circumstances, a search under the ordinance – which could entail nothing more than a brief look at a publicly accessible record in a publicly accessible lobby for information in which hotel guests have no privacy interest – may be a minimal intrusion. *See King*, 133 S. Ct. at 1969 (explaining that "[t]he fact that an intrusion is negligible is of central relevance to determining reasonableness, although it is still a search as the law defines that term"). The ordinance narrowly cabins officer discretion by permitting only inspections of the specified guest registry information. *Compare Al Haramain Islamic Found., Inc. v. U.S. Dept. of Treasury*, 686 F.3d 965, 992 (9th Cir. 2012) (discussing authority that a warrant may not be required when "intrusions 'are defined narrowly and specifically in the regulations that authorize them'"), *with See v. City of Seattle*, 387 U.S. 541, 543–44 (1967) (discussing the Fourth Amendment's application to administrative investigations, including "perusal of financial books and records").

Without an evidentiary showing, we cannot conclude that any search pursuant to the ordinance would unreasonably intrude on privacy interests that society recognizes as legitimate. *See King*, 133 S. Ct. at 1978 (explaining that "[t]he reasonableness of any search must be considered in the context of the person's legitimate expectations of privacy"). On review of a proper evidentiary foundation, perhaps we would conclude that the balance weighs in favor of the conclusion that hotels have an expectation of privacy in guest registry information that society recognizes as

reasonable. The majority opinion does not do that review, though, and the existing record does not permit it to do so. It is not nearly enough to assert, as the majority opinion does, at 9, that a "search is a search." That is, as the Court noted in *Maryland v. King*, just "the beginning point, not the end of the analysis." 133 S. Ct. at 1969. Unfortunately, the majority opinion fails to travel the rest of the road.

For Plaintiffs to prevail, they must demonstrate that the search provided under the ordinance is unreasonable in all circumstances. They have not, and the majority opinion has not, either.

I respectfully dissent.

APPENDIX B

FOR PUBLICATION

UNITED STATES COURT OF APPEALS
FOR THE NINTH CIRCUIT

No. 08-56567
D.C. No. 2:05-cv-01571-DSF-AJW

[Filed July 17, 2012]

NARANJIBHAI PATEL; RAMILABEN PATEL,	)
Plaintiffs-Appellants,	)
v.	)
CITY OF LOS ANGELES, a municipal corporation,	)
Defendant-Appellee.	)

OPINION

Appeal from the United States District Court
for the Central District of California
Dale S. Fischer, District Judge, Presiding

Argued and Submitted
December 6, 2010—Pasadena, California

Filed July 17, 2012

Before: Harry Pregerson, Richard R. Clifton, and Carlos T. Bea, Circuit Judges.

Opinion by Judge Clifton;
Dissent by Judge Pregerson

COUNSEL

Frank A. Weiser, Los Angeles, California, for appellants Naranjibhai Patel and Ramilaben Patel.

Rockard J. Delgadillo, City Attorney, Laurie Rittenberg, Assistant City Attorney, Todd Leung (argued), Deputy City Attorney, Los Angeles, California, for appellee City of Los Angeles.

OPINION

CLIFTON, Circuit Judge:

Plaintiffs Naranjibhai Patel and Ramilaben Patel are owners and operators of motels in Los Angeles. They challenge the constitutionality of Los Angeles Municipal Code (LAMC) § 41.49, which requires operators of hotels in the City to maintain certain guest registry information and to make that information available to police officers on request. Appellants contend that LAMC § 41.49 is facially unconstitutional under the Fourth Amendment because it authorizes unreasonable invasions of their private business records without a warrant or pursuant to any recognized warrant exception. Following a bench trial on stipulated evidence, the district court held that the ordinance was reasonable and granted judgment in favor of the City, concluding that the hotel operators did not establish that they had a privacy interest in the guest registry information.

A facial challenge is "the most difficult challenge to mount successfully, since the challenger must establish that no set of circumstances exist under which the Act would be valid." *United States v. Salerno*, 481 U.S. 739, 745 (1987); *see Washington State Grange v. Washington State Republican Party*, 552 U.S. 442, 449 (2008) ("*i.e.*, that the law is unconstitutional in all of its applications"). That the ordinance might operate unconstitutionally under some circumstances is not enough to render it invalid against a facial challenge. The Patels have not satisfied that high standard. As a result, this facial challenge to the ordinance fails. We affirm.

I. Background

The facts of this case are simple and undisputed. The only exhibit introduced at the bench trial was the text of LAMC § 41.49. The parties stipulated that the Patels have been and continue to be subjected to searches and seizures of their motel registration records by the police, pursuant to the ordinance, without consent or a warrant. The parties also stipulated that the only issue at trial was the facial constitutionality of LAMC § 41.49.

The ordinance defines "hotel" broadly to cover hotels, motels, inns, rooming houses, and other establishments offering space for overnight accommodations for rent for a period of less than 30 days. It requires that every operator of a hotel record certain information concerning its guests, including name and address; total number of guests; make, type and license number of the guest's vehicle if parked on hotel premises; date and time of arrival; scheduled date of departure; room number; rate charged and collected;

method of payment; and the name of the hotel employee who checked the guest in. The record may be kept in electronic, ink, or typewritten form. LAMC § 41.49(2). The ordinance requires that the record be kept on the hotel premises in the guest reception area or in an adjacent office for at least 90 days after the last entry. It provides specific requirements for the form of the guest register and requires that it must be printable if maintained electronically. LAMC § 41.49(3).

With regard to the authority of the police to require that the registration records be made available, the ordinance provides that:

> The record shall be made available to any officers of the Los Angeles Police Department for inspection. Whenever possible, the inspection shall be conducted at a time and in a manner that minimizes any interference with the operation of the business.

LAMC § 41.49(3)(a).

Based on the stipulated record, the district court entered judgment in favor of the City. The Patels timely appealed.

II. Discussion

We review interpretations of and constitutional challenges to regulations de novo. *Mapes v. United States*, 15 F.3d 138, 140 (9th Cir. 1994). A district court's grant of summary judgment is reviewed de novo as well. *Hapner v. Tidwell*, 621 F.3d 1239, 1244 (9th Cir. 2010).

[1] The Fourth Amendment protects "[t]he right of the people to be secure in their persons, houses, papers, and effects against unreasonable searches and seizures." Not all intrusions violate the Fourth Amendment — only "unreasonable" ones do. As the Supreme Court has observed, "'reasonableness is still the ultimate standard' under the Fourth Amendment." *Soldal v. Cook County*, 506 U.S. 56, 71 (1992) (quoting *Camara v. Municipal Court of San Francisco*, 387 U.S. 523, 539 (1967)).

[2] The Fourth Amendment applies "when government officers violate a person's 'reasonable expectation of privacy.'" *United States v. Jones*, 132 S.Ct. 945, 950 (2012). In addition, the Fourth Amendment embodies "a particular concern for government trespass upon the areas ('persons, houses, papers, and effects') [the Fourth Amendment] enumerates." *Id.*[1] The reasonable-expectation-of-privacy test has been added to, not substituted for, the common-law trespassory test." *Id.* at 952. We will discuss both in turn.

A. Reasonable expectation of privacy

Most applications of the Fourth Amendment focus on an individual's "reasonable expectation of privacy." *See Minnesota v. Carter*, 525 U.S. 83, 88 (1998) ("in

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[1] In *Jones*, the Court held that attachment of a Global Positioning System (GPS) tracking device to a vehicle and subsequent use of that device to monitor the vehicle's movements on public streets was a search within the meaning of the Fourth Amendment. That decision was filed after this case was submitted to our court. We requested and obtained from the parties supplemental briefing on the impact of that decision.

order to claim the protection of the Fourth Amendment, a [person] must demonstrate that he personally has an expectation of privacy in the place searched, and that his expectation is reasonable"). The expectation of privacy must be "one which society accepts as objectively reasonable." *United States v. Thomas*, 447 F.3d 1191, 1196 (9th Cir. 2006).

[3] The information covered by the Los Angeles ordinance principally concerns hotel guests. The information does not, on its face, appear confidential or "private" from the perspective of the hotel operator.

[4] We have already held that hotel guests do not have a reasonable expectation of privacy in guest registry information once they have provided it to the hotel operator. *United States v. Cormier,* 220 F.3d 1103, 1108 (9th Cir. 2000). We noted that the information at issue in that case, the guest's name and room number, was not "highly personal information." *Id.* We also noted that once the guest has voluntarily revealed factual information to the hotel in the process of checking in, he can no longer claim a reasonable expectation of privacy in that information, citing *United States v. Miller*, 425 U.S. 435, 441-43 (1976) (holding that a bank customer did not have a reasonable expectation of privacy in records maintained by the bank). *Cormier,* 220 F.3d at 1108.

[5] The Patels presented no evidence to support their contention that hotel owners and operators, including themselves, have their own expectation of privacy in the information contained in guest registers. It may be true, as they allege, that the information could be used by the hotel operators for other purposes, but that does not mean hotel owners have a reasonable

expectation of privacy in the registers. Just because information can be used by a business does not mean that the business owner desires to keep the information private, or that society would accept such a desire as objectively reasonable. Here, there is no evidence that all hotel owners affected by the regulation even consider the information to be private, let alone that any such expectation is reasonable.

Moreover, the Patels have presented no evidence that hotel owners customarily maintain guest registers in a manner that would support a claim of privacy. As *Miller* and *Cormier* recognized, once information is revealed to others it is unlikely that a reasonable expectation of privacy can be established. An old-fashioned guest register may take the form of a book located on the counter in the guest reception area, a form that would appear to satisfy the ordinance. But it is unlikely society would recognize a reasonable expectation of privacy in information kept in a manner so easily accessible by anyone entering the hotel.

[6] To be clear, we do not hold that a hotel owner or operator can never have a reasonable expectation of privacy in guest register information. To this end, we reject the argument of the City that hotel owners can never have a reasonable expectation of privacy in the guest registries simply because the regulation informs them that the police can inspect the registries on request. An individual's otherwise reasonable expectation of privacy cannot be so easily stripped away merely by the adoption of a regulation authorizing searches of an item or location. To hold otherwise would allow the government to conduct warrantless searches just by announcing that it can.

See United States v. Consol. Coal Co., 560 F.2d 214, 217 (6th Cir. 1977), *vacated and remanded on other grounds*, 436 U.S. 942 (1978), *judgment reinstated*, 579 F.2d 1011 (6th Cir. 1978), *cert. denied* 439 U.S. 1069 (1979) ("Even where a statute requires records to be maintained and authorizes on-premises inspection of them in the normal course, no precedent sanctions direct access to the records without demand in the absence of a search warrant."); *see also McLaughlin v. Kings Island*, 849 F.2d 990, 995 (6th Cir. 1988) ("[T]he concept of 'required records' is not synonymous with the absence of a privacy interest."); *Brock*, 834 F.2d 994, 996 (11th Cir. 1987) (concluding business had a privacy interest in records OSHA required it to keep and make available for inspection).

A customer list, for example, may be entitled to the protection of the Fourth Amendment, like other business records and premises. *See Marshall v. Barlow's, Inc.*, 436 U.S. 307, 312 (1978) (discussing historical background of Fourth Amendment and noting that "[a]gainst this background, it is untenable that the ban on warrantless searches was not intended to shield places of business"); *United States v. Burger*, 482 U.S. 691, 699 (1987) ("An owner or operator of a business thus has an expectation of privacy in commercial property, which society is prepared to consider reasonable"). Businesses may have a reasonable expectation of privacy in their information contained in their records. *See G.M. Leasing Corp. v. United States*, 429 U.S. 338, 352 (1977) (seizure of corporate books and records implicated company's privacy interest); *See v. City of Seattle*, 387 U.S. 541, 544 (1967) (Fourth Amendment applies to government's "perusal of financial books and records").

[7] But the Patels have provided no evidence or other basis for us to conclude that they have an objectively reasonable expectation of privacy in the information covered by this ordinance, let alone that all hotel operators do. They cannot meet the standard for a successful facial challenge because they cannot "establish that no set of circumstances exist under which the Act would be valid." *Salerno*, 481 U.S. at 745.

B. The common-law trespassory test

The Patels argue that they may have a valid claim even if they lack a reasonable expectation of privacy in the information at issue because the Fourth Amendment protects interests in addition to privacy. That is true, as confirmed by the Court's recent decision in *Jones*.

But "reasonableness" remains the "ultimate standard" under the Fourth Amendment. *Soldal*, 506 U.S. at 71. *Jones* did not change that. *Jones* did not discuss the "reasonableness" standard in applying what it described as the "common-law trespassory test" because, as the Court specifically held, the government had "forfeited" the argument that the attachment and use of the GPS device was reasonable by failing to make that argument to the court of appeals. 132 S.Ct. at 954.

[8] The Fourth Amendment explicitly protects "papers." The guest register covered by the city ordinance is a protected paper. But the intrusion imposed by the ordinance is limited. The Patels make no claim that they have been or will be physically dispossessed of any property. No "seizure" of property

is inherent under the ordinance, nor is it to be expected. The ordinance is concerned with obtaining access to information and provides several options as to the form in which the hotel operator keeps the information. Nothing in the ordinance provides that the hotel operator cannot keep the information available for its own use at the same time that a police officer may be inspecting it. If it is kept electronically or if duplicate records are maintained, both the hotel operator and the police officer may be able to have access to the information at the same time. The ordinance also specifically provides that any inspection "shall be conducted at a time and in a manner that minimizes any interference with the operation of the business." LAMC § 41.49(3)(a).

Nor does the inspection authorized by the ordinance require a physical invasion of the hotel operator's private premises. The ordinance requires that the register information be maintained in the guest reception or guest check-in area or in an office adjacent to that area. The reception area is by nature public, not private. As the records may be kept and made available for inspection there, the ordinance does not require intrusion into any private space.

[9] The Patels have failed to demonstrate that the limited intrusion authorized under the ordinance is unreasonable in their own particular circumstances, let alone in terms that would support a facial challenge to the ordinance.

C. Plaintiffs' additional arguments

The Patels make additional arguments that we conclude are not persuasive.

[10] The Patels contend that the Supreme Court established certain requirements that must be satisfied for a system of warrantless inspections to be permitted under the Fourth Amendment, citing *United States v. Burger*, 482 U.S. 691 (1987). They argue that the Los Angeles ordinance at issue here does not satisfy those requirements, most importantly because the motel industry is not a "closely regulated" industry.[2] It is certainly true that the Court has recognized that the operator of commercial premises in a "closely regulated" industry has a reduced expectation of privacy, such that warrantless inspection of those premises may be accepted as reasonable under the Fourth Amendment when a similar inspection of different premises would not be permitted. *See id.* at 702. But that assumes that there is a privacy interest protected by the Fourth Amendment in the first place. Because the Patels have failed to establish that they have a reasonable expectation of privacy in the information covered by the ordinance, there is no need to justify the examination of the guest register as a warrantless administrative search under *Burger*

The Patels also cite our decision in *Tucson Woman's Clinic v. Eden*, 379 F.3d 531, 539-42 (9th Cir. 2004), as directly on point in support of their claim. It is not. That case dealt with regulation of abortion clinics. In that context we noted that "the expectation of privacy is *heightened*, given the fact that the clinic provides a

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[2] The district court agreed with the Patels on that point, concluding that the City failed to establish that hotels and motels were closely regulated for the purpose of qualifying for that exception for warrantless administrative searches. Because we resolve the case on another ground, we do not reach that issue.

service grounded in a fundamental constitutional liberty, and that all provision of medical services in private physicians' offices carries with it a high expectation of privacy for both physician and patient." *Id.* at 550. The Patels have not established a reasonable expectation of privacy in the first place.

III. Conclusion

[11] The Patels have not established that all hotel owners have a reasonable expectation of privacy in their guest registers, or even that they themselves do. Nor have they demonstrated that the inspection of guest registers authorized by the ordinance is an unreasonable intrusion. As a result, we conclude that LAMC § 41.49 is not facially unconstitutional.

AFFIRMED.

PREGERSON, Circuit Judge, dissenting:

The Supreme Court has repeatedly held that warrantless searches by police "'are *per se* unreasonable under the Fourth Amendment—subject only to a few specifically established and well-delineated exceptions.'" *Arizona v. Gant*, 556 U.S. 332, 338 (2009) (quoting *Katz v. United States*, 389 U.S. 347, 357 (1967)); *see also Mincey v. Arizona*, 437 U.S. 385, 390 (1978) ("[I]t is a cardinal principle that 'searches conducted outside the judicial process, without prior approval by judge or magistrate, are *per se* unreasonable under the Fourth Amendment—subject only to a few specifically established and well-delineated exceptions.'") (quoting *Katz*, 389 U.S. at 357). Today, the majority overlooks this well-established rule.

The majority upholds an ordinance that violates the Fourth Amendment on its face. Los Angeles Municipal Code Section 41.49 authorizes the Los Angeles Police Department to search hotel business records *without a warrant*. To pass constitutional muster, a warrantless search of a business, like any warrantless search, must be based on a "specifically established and well-delineated exception[ ]" to the Fourth Amendment's warrant requirement. *Gant*, 556 U.S. at 338 (internal quotation marks omitted); *see also Marshall v. Barlow's, Inc.*, 436 U.S. 307, 311 (1978) (noting that the Fourth Amendment's warrant requirement applies to "places of business"). What is the "specifically established and well-delineated exception[ ]" put forth by the majority? There is none. Instead, the majority simply declares that the searches at issue are reasonable. Maj. Op. at 8202-03.

The majority concedes that the ordinance authorizes a "search" within the meaning of the Fourth Amendment. *See* Maj. Op. at 8202 ("The Fourth Amendment explicitly protects 'papers.' The guest register covered by the city ordinance is a protected paper."). The majority further concedes that the ordinance authorizes these searches to occur without a warrant. Maj. Op. at 8197.

Thus it is clear that, to comply with the Fourth Amendment, the ordinance must fall within a "specifically established and well-delineated exception[ ]" to the warrant requirement. *Gant*, 556

U.S. at 338 (internal quotation marks omitted). Yet the majority does not offer any exception.[1]

The majority opinion conflicts with long-standing and well-established Fourth Amendment jurisprudence. Accordingly, I dissent.

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[1] I agree with the district court that the exception to the warrant requirement for "closely regulated" industries does not apply. *See New York v. Burger*, 482 U.S. 691, 700-02 (1987) (describing exception to the warrant requirement for "closely regulated" industries). The city has not offered any evidence that hotels in Los Angeles have been subjected to intense regulatory scrutiny. The city cites a handful of state and local laws to establish that hotels are "closely regulated," but most of the laws cited by the city are laws of general applicability, and do not establish that *hotels* are a closely regulated industry. *See Rush v. Obledo*, 756 F.2d 713, 722 (9th Cir. 1985).

APPENDIX C

UNITED STATES DISTRICT COURT
CENTRAL DISTRICT OF CALIFORNIA

CASE NO. CV 05-1571 DSF (AJWx)

[Filed September 5, 2008]

NARANJIBHAI PATEL, et al.,	)
	)
Plaintiffs,	)
	)
vs.	)
	)
CITY OF LOS ANGELES, et al.,	)
	)
Defendants.	)
	)

FINDINGS OF FACT AND CONCLUSIONS OF LAW AFTER COURT TRIAL

This matter was tried before the Court on April 26, 2008. Having fully considered the submissions of the parties and their oral arguments, the Court now grants judgment in favor of Defendant, and makes the findings of fact and conclusions of law set forth below pursuant to Rule 52 of the Federal Rules of Civil Procedure.

I. FINDINGS OF FACT[1]

1. Los Angeles Municipal Code ("LAMC") Sec. 41.49 is titled "Hotel Registers and Room Rentals" and provides in part:

LAMC Sec.41.49.2. **Hotel Record Information.**

(a) Every operator of a hotel shall keep a record in which the following information shall be entered legibly, either in electronic, ink or typewritten form prior to the room being furnished or rented to a guest:

(1) As provided by the guest in response to an inquiry or by other means:

(I) The name and address of each guest and the total number of guests;

(ii) The make, type and license number of the guest's vehicle if the vehicle will be parked on hotel premises that are under the control of the Operator or hotel management;

(iii) Identification information as required by Subsection 4(a) and (b) of this section.

(2) The day, month, year and time of arrival of each guest;

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[1] The parties agree that there are no disputed issues of fact.

(3) The number or other identifying symbol of location of the room rented or assigned each guest;

(4) The date that each guest is scheduled to depart;

(5) The rate charged and amount collected for rental of the room assigned to each guest;

(6) The method of payment for the room;

(7) The full name of the person checking in the guest.

(b) For a guest checking in via an electronic registration kiosk at the hotel, instead of the information required by Subsection 2.(a), the hotel shall maintain the name, reservation information and credit card information provided by the guest, as well as the identifying symbol of the kiosk where the guest checked in and the room number assigned to the guest.

LAMC 41.49.3 **Maintenance of Hotel Record**. Every operator of a hotel shall comply with the following requirements for maintaining the hotel record:

(a) The record shall be kept on the hotel premises in the guest reception or guest check-in area or in an office adjacent to that area. The record shall be maintained at that location on the hotel premises for a period of 90 days from and after the date of the last

entry in the record and *shall be made available to any officer of the Los Angeles Police Department for inspection. Whenever possible, the inspection shall be conducted at a time and in a manner that minimizes any interference with the operation of the business*. (emphasis added.)

(b) No person shall alter, deface or erase the record so as to make the information recorded in it illegible or unintelligible, or hinder, obstruct or interfere with any inspection of the record under this section.

(c) Any record maintained in the form of a book shall be permanently bound, each page shall be sequentially numbered and the book shall be the minimum size of eight by ten inches. No page shall be removed from the book. Any record maintained in the form of cards shall be on cards that are the minimum size of two and one-half inches by four inches and numbered consecutively and used in sequence. Any card numbered within the sequence of utilized cards shall be preserved as part of the record even if it is not used for a room rental. The numbers shall be printed or otherwise indelibly affixed to the cards. If maintained electronically, the record shall be printable.

(d) Nothing in this section absolves the operator from maintaining the record for longer than 90 days in order to comply with any other provision of law, including the obligation to

maintain and produce records for the purpose of paying a transient occupancy tax.

2. Plaintiffs have been subject to and continue to be subject to searches and seizures of motel registration records by the Los Angeles Police Department without consent or warrant pursuant to LAMC Sec. 41.49, which permits law enforcement to demand inspection of motel registers at any time without consent or warrant. (Defs.' Final Pretrial Conference Order 2-3.[2])

3. The parties agree that the sole issue in this action is a facial constitutional challenge to LAMC Sec. 41.49 under the Fourth Amendment. (Id. 3.)

II. CONCLUSIONS OF LAW REGARDING ADMINISTRATIVE SEARCH EXCEPTION

1. The state may conduct warrantless searches of a business under the administrative search exception to the Fourth Amendment if the business is "closely regulated." Tucson Woman's Clinic v. Eden, 379 F.3d 531, 550 (9th Cir. 2004).

2. The "warrantless inspection, even in the context of a pervasively regulated business, will be deemed to be reasonable only so long as three criteria are met. First, there must be a 'substantial' government interest that informs the regulatory scheme pursuant to which the

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[2] In light of this admitted fact, the Court finds that Plaintiffs have standing.

inspection is made. Second, the warrantless inspections must be necessary to further the regulatory scheme. Finally, the statute's inspection program, in terms of the certainty and regularity of its application, must provide a constitutionally adequate substitute for a warrant." New York v. Burger, 482 U.S. 691, 702-03 (1987) (internal citations and quotations omitted).

3. Thus, determining whether a business is "closely regulated" is the threshold inquiry under the administrative search analysis.

4. Whether a business is closely regulated is defined by the pervasiveness and regularity of the regulation and the effect of such regulation on an owner's expectation of privacy. Tucson Woman's Clinic, 379 F.3d at 550.

5. The following industries have been determined to be closely regulated: vehicle dismantling, firearms dealers, liquor distribution, and liquefied propane gas retailing. Id. The veterinary drug and stone quarrying/mining industries have also been labeled as closely regulated industries. U.S. v. 4,432 Mastercases of Cigarettes, More or Less, 448 F.3d 1168, 1176 (9th Cir. 2006).

6. Defendant submits no evidence that hotels or motels in California or Los Angeles have been subjected to the same kind of pervasive and regular regulations as other recognized "closely regulated" businesses. For example, unlike the liquor industry, which has been "long subject to

close [federal] supervision and inspection," Burger, 482 U.S. at 700, there is no evidence that the hotel and motel industry have been subject to intense regulatory scrutiny. Therefore, the Court is not persuaded on this record that hotels and motels are closely regulated businesses for purposes of the administrative search exception to the Fourth Amendment.

7. Because of the conclusions set forth below, however, it is not necessary to make a finding on this issue or to analyze the Burger factors to determine the reasonableness of a warrantless inspection under LAMC Sec. 41.49.

III. CONCLUSIONS OF LAW REGARDING REASONABLE EXPECTATION OF PRIVACY IN HOTEL REGISTERS

8. A "facial challenge to a legislative Act is the most difficult challenge to mount successfully, since the challenger must establish that no set of circumstances exists under which the Act would be valid." U.S. v. Salerno, 481 U.S. 739, 745 (1987).

9. "[I]n order to claim the protection of the Fourth Amendment, a [person] must demonstrate that he personally has an expectation of privacy in the place searched " Minnesota v. Carter, 525 U.S. 83, 88 (1998).

10. Hotel guests have no reasonable expectation of privacy in a hotel's guest registration records. U.S. v. Cormier, 220 F.3d 1103, 1107-08 (9th Cir. 2000). (In Cormier, the motel owner voluntarily agreed to provide the guest check-in

register to the police. Id. at 1108. The motel guest unsuccessfully asserted that he had a reasonable expectation of privacy in the guest register. Id.)

11. Here, however, motel owners assert that they have a reasonable expectation of privacy in the guest register. No case cited to or found by the Court suggests that hotel or motel owners have a reasonable expectation of privacy in registers created pursuant to a municipal mandate.

12. In U.S. v. Miller, 425 U.S. 435, 440 (1976), the Supreme Court concluded that a party must be able to assert ownership or possession of a record to claim Fourth Amendment protection. The Court is not convinced that hotel or motel owners have an ownership or possessory interest or at least not one that gives rise to a privacy right in the guest registers. The hotel and motel owners must create and maintain these registers in order to comply with the ordinance at issue. They do not contend that the requirement to create and maintain the registers violates their rights. They argue that the registers are business records that they may use for other purposes, but it does not appear that they are prevented from maintaining a separate set of documents containing the same or similar information in another location not subject to inspection.

13. The hotel and motel owners may keep the records available for review in a guest check-in or guest reception area. Hotels and motels are generally open to receive guests at all times. The

records subject to inspection are limited to those that are required by law to be kept. The Court finds the ordinance to be reasonable.

14. Plaintiffs have not met the high burden of showing that LAMC Sec. 41.49 cannot be valid under any circumstances. It can be reasonably interpreted as a measured ordinance meant to discourage and fight crime in hotels and motels.

15. The Court concludes that LAMC Sec. 41.49 is not unconstitutional on its face.

DATED: 9/5/08

/s/ Dale S. Fischer
Dale S. Fischer
United States District Judge

UNITED STATES DISTRICT COURT
CENTRAL DISTRICT OF CALIFORNIA

CASE NO. CV 05-1571 DSF (AJWx)

[Filed September 5, 2008]

NARANJIBHAI PATEL, et al.,

Plaintiffs,

v.

CITY OF LOS ANGELES, et al.,

Defendants.

JUDGMENT FOR DEFENDANTS
AFTER COURT TRIAL

The Court having conducted a trial of this case, having reviewed the evidence submitted by the parties, and having issued its Findings of Fact and Conclusions of Law After Court Trial, it is ORDERED, ADJUDGED AND DECREED that judgment be entered against plaintiffs and in favor of defendants, that the plaintiffs take nothing, and that defendants recover its costs of suit pursuant to a bill of costs filed in accordance with 28 U.S.C. § 1920.

Dated: 9/5/08

/s/ Dale S. Fischer
Dale S. Fischer
United States District Judge

APPENDIX D

Relevant Constitutional and Statutory Provisions

U.S. Const. amend. IV

The right of the people to be secure in their persons, houses, papers, and effects, against unreasonable searches and seizures, shall not be violated, and no Warrants shall issue, but upon probable cause, supported by Oath or affirmation, and particularly describing the place to be searched, and the persons or things to be seized.

42 U.S.C. § 1983

Every person who, under color of any statute, ordinance, regulation, custom, or usage, of any State or Territory or the District of Columbia, subjects, or causes to be subjected, any citizen of the United States or other person within the jurisdiction thereof to the deprivation of any rights, privileges, or immunities secured by the Constitution and laws, shall be liable to the party injured in an action at law, suit in equity, or other proper proceeding for redress, except that in any action brought against a judicial officer for an act or omission taken in such officer's judicial capacity, injunctive relief shall not be granted unless a declaratory decree was violated or declaratory relief was unavailable. For the purposes of this section, any Act of Congress applicable exclusively to the District of Columbia shall be considered to be a statute of the District of Columbia.

Los Angeles Municipal Code § 41.49 Hotel Registers and Room Rentals.

(Amended by Ord. No. 179,025, Eff. 9/5/07.)

1. **Definitions.** For purposes of this section:

Guest means a person who exercises occupancy or is entitled to occupancy in a hotel by reason of concession, permit, right of access, license or other agreement.

Hotel means any public or private space or structure, including but not limited to, any inn, hostelry, tourist home, motel, lodging house or motel rooming house offering space for sleeping or overnight accommodations in exchange for rent and for a period of less than 30 days. Hotel includes the parking lot and other common areas of the hotel. Hotel does not include living accommodations provided at any governmental or nonprofit institution in connection with the functions of that institution.

Identification document means a document that contains the name, date of birth, description and picture of a person, issued by the federal government, the State of California or another state, or a county or municipal government subdivision or agency, or any of the foregoing, including but not limited to, a motor vehicle operator's license, an identification card, or an identification card issued to a member of the Armed Forces. Identification document also includes a passport issued by a foreign government or a consular identification card, issued by a foreign government to any of its citizens and nationals, which has been approved by the City of Los Angeles as valid identification.

Occupancy means the use or possession, or the right to the use or possession, of any room in any hotel.

Operator means the person who is either the proprietor of the hotel or any other person who has the right to rent rooms within the hotel, whether in the capacity of owner, manager, lessee, mortgagee in possession, licensee, employee or any other capacity.

Record means written documentation of information about a guest. A record may be maintained electronically, in a book or on cards.

Rent means the consideration charged, whether or not received, for the occupancy of a room in a hotel valued in money, whether to be received in money, goods, labor or otherwise, including all receipts, cash, credits and property and services of any kind or nature.

Reservation means a request to hold a room for a potential guest that includes the following information and is documented in writing: (i) The potential guest's name and contact information and (ii) the date and time when the contact was made.

Room means any portion of a hotel, which is designed or intended for occupancy by a person for temporary lodging or sleeping purposes.

Walk-in guest means any guest who did not make a reservation for a room prior to the time that he or she seeks to check in at the hotel

2. **Hotel Record Information.**

(a) Every operator of a hotel shall keep a record in which the following information shall be entered

legibly, either in electronic, ink or typewritten form prior to the room being furnished or rented to a guest:

(1) As provided by the guest in response to an inquiry or by other means:

(i) The name and address of each guest and the total number of guests;

(ii) The make, type and license number of the guest's vehicle if the vehicle will be parked on hotel premises that are under the control of the Operator or hotel management;

(iii) Identification information as required by Subsection 4.(a) and (b) of this section.

(2) The day, month, year and time of arrival of each guest.

(3) The number or other identifying symbol of location of the room rented or assigned each guest.

(4) The date that each guest is scheduled to depart.

(5) The rate charged and amount collected for rental of the room assigned to each guest.

(6) The method of payment for the room.

(7) The full name of the person checking in the guest.

(b) For a guest checking in via an electronic registration kiosk at the hotel, instead of the

information required by Subsection 2.(a), the hotel shall maintain the name, reservation information and credit card information provided by the guest, as well as the identifying symbol of the kiosk where the guest checked in and the room number assigned to the guest.

3. **Maintenance of Hotel Record.** Every operator of a hotel shall comply with the following requirements for maintaining the hotel record.

(a) The record shall be kept on the hotel premises in the guest reception or guest check-in area or in an office adjacent to that area. The record shall be maintained at that location on the hotel premises for a period of 90 days from and after the date of the last entry in the record and shall be made available to any officer of the Los Angeles Police Department for inspection. Whenever possible, the inspection shall be conducted at a time and in a manner that minimizes any interference with the operation of the business.

(b) No person shall alter, deface or erase the record so as to make the information recorded in it illegible or unintelligible, or hinder, obstruct or interfere with any inspection of the record under this section.

(c) Any record maintained in the form of a book shall be permanently bound, each page shall be sequentially numbered and the book shall be the minimum size of eight by ten inches. No page shall be removed from the book. Any record maintained in the form of cards shall be on cards that are the minimum size of two and one-half inches by four inches and numbered consecutively and used in sequence. Any card numbered within the sequence of utilized cards

shall be preserved as part of the record even if it is not used for a room rental. The numbers shall be printed or otherwise indelibly affixed to the cards. If maintained electronically, the record shall be printable.

(d) Nothing in this section absolves the operator from maintaining the record for longer than 90 days in order to comply with any other provision of law, including the obligation to maintain and produce records for the purpose of paying a transient occupancy tax.

4. **Renting of Hotel Rooms.** The operator of a hotel shall not rent a room except in compliance with the following conditions.

(a) A guest who pays all or part of the rent for a room in cash at the time of checking in, and a walk-in guest, shall be required to present an identification document at the time of checking into the hotel.

(b) A room shall not be rented hourly or for less than 12 hours unless an identification document is obtained from the guest when he or she checks into the hotel.

(c) The number and expiration date of the identification document obtained under Subsections 4.(a) or (b) shall be recorded and maintained by the operator in the record for at least 90 days.

5. **Training of employees.** The owner or proprietor of a hotel business shall take all reasonable steps, including but not limited to, providing training regarding this section to ensure that the person who checks a person into the hotel complies with the provisions of this section. A person who has not been

trained shall not be assigned to check persons into the hotel.

6. **Guest obligations.**

(a) No person shall give any assumed, false or fictitious names, or any other name other than his or her true name when checking into a hotel.

(b) No person shall present to any hotel identification that is any way false, altered or counterfeit or belongs to another person.

(c) Subsection 6. shall not apply to law enforcement personnel engaged in an investigation.

APPENDIX E

State Statutes, County and Municipal Ordinances

State Statutes

Me. Rev. Stat. tit. 30-A, § 3821 (2014)

* * *

2. RECORD OF DEPARTURES. The proprietor or the proprietor's agent shall keep and maintain a record showing the date when the occupant of each room surrenders the room. This record may be made a part of the register.

3. AVAILABILITY FOR INSPECTION. Both the register and the record must be kept for 2 years and be available at all reasonable times to the inspection of any lawful agent of the licensing authority or any full-time law enforcement officer as defined in *Title 25, section 2801-A*, subsection 4. The guest register may be "kept," within the meaning of this section, when reproduced on any photographic, microfilm or other process that reproduces the original record.

4. VIOLATION AND PENALTY. Notwithstanding *Title 17-A, section 4-A*, any person who willfully violates this section is guilty of a Class E crime and shall be punished by a fine of not less than $ 100 nor more than $ 500, or by imprisonment for not more than 90 days for each offense, or both.

Mass. Ann. Laws ch. 140, § 27 (1991)

Every innholder, and every lodging house keeper required so to do under section twenty-eight, and every person who shall conduct, control, manage or operate, directly or indirectly, any recreational camp, overnight camp or cabin, motel or manufactured housing community shall keep or cause to be kept, in permanent form, a register in which shall be recorded the true name or name in ordinary use and the residence of every person engaging or occupying a private room averaging less than four hundred square feet floor area, excepting a private dining room not containing a bed or couch, or opening into a room containing a bed or couch, for any period of the day or night in any part of the premises controlled by the licensee, together with a true and accurate record of the room assigned to such person and of the day and hour when such room is assigned. The entry of the names of the person engaging a room and of the occupants of said room shall be made by said person engaging said room or by an occupant thereof, except that when five or more members of a business, fraternal, or social group or other group having a common interest are engaging rooms, they may designate one person to make said entry on their behalf and prior to occupancy. Until the entry of such name and the record of the room has been made, such person shall not be allowed to occupy privately any room upon the licensed premises. Such register shall be retained by the holder of the license for a period of at least one year after the date of the last entry therein, and shall be open to the inspection of the licensing authorities, their agents and the police. Whoever violates any provision of this section shall be punished by a fine of

not less than one hundred nor more than five hundred dollars or by imprisonment for not more than three months, or both.

County Ordinances

Alameda County, Cal., Code § 3.20.010 (2013)

Every person engaged in the business of conducting or operating a hotel, inn, rooming house, lodging house, auto camp or other similar place within the county shall require all guests to register by requiring all guests to sign their names and write their addresses in a book kept for that purpose. Minor children accompanied by a parent need not sign their name or write their address in the book. The book shall at all times be open to public inspection and must be kept for a period of not less than five years after the last registration in the book.

Maui County, Haw., Code § 5.08.010

A. Every owner, keeper or proprietor of any lodginghouse, roominghouse or hotel shall keep a register wherein he shall require all guests, roomers, or lodgers to inscribe their names upon their procuring of lodging or a room or accommodations. The register shall also show the day of the month and year when the name was inscribed, and the room occupied or to be occupied by the lodger, roomer or guest in such lodginghouse, roominghouse or hotel. The register shall at all times be open to inspection by the chief of police or any police officer or detective of the Maui police department, when required.

B. For the purpose of this chapter, "register" means either a permanently bound blank book, sufficient in size to contain all the information herein required to be placed therein, or a series of individual cards with adequate space on each to enter all the information required by this section. All cards thereafter shall be systematically filed and be open to inspection as provided in subsection A of this section.

Municipal Ordinances

Alsip, Ill., Code § 6-407 (2013)

Every person to whom a hotel or motel business license has been issued shall at all times keep a register within the premises, in which shall be written the names of all occupants renting or occupying hotel, motel or dwelling units in such hotel or motel. The register shall be signed by the person renting the unit. The register shall also contain the names of all other persons occupying the room or rooms rented by the person and shall include the date and time when such units were rented. The register shall at all times be open to inspection by the police chief, the fire chief, the commissioner of health, the building inspector, or their authorized representatives.

Arcadia, Cal., Code § 4231.6 (2013)

Such register shall be kept in a conspicuous place, and shall be at all times open to the inspection of any guest of such house or hotel and of any executive or police officer of the City.

Atlanta, Ga., Code § 30-768 (2013)

(a) Any license granted under this division shall be subject to revocation for cause. If any officer or employee of a hotel, lodginghouse or other place having a register containing the names of guests shall fail or refuse to permit a police officer to check the register, it shall be deemed a sufficient cause for revocation of a license. The failure of the applicant, license holder, the property owner or any person acting as an agent for or on behalf of such person to pay property taxes, hotel/motel occupancy taxes or any other taxes required by law to be paid in association with the operation of the business or licensed premises shall constitute grounds for the denial of an application for an original or renewal license and the revocation of a current license to operate the hotel, motel, lodging house, or rooming house.

(b) Whenever in the opinion of the license review board there is cause to revoke a license, a written notice of intention to revoke shall be furnished the holder of the license three days before a regular or called meeting of the license review board, at which time the holder of the license may make such showing as the holder of the license may deem proper. After a hearing, the license review board shall report its recommendation to the mayor, who may revoke the license if in the mayor's discretion it is to the best interest of the peace and good order of the city.

Baton Rouge, La., Code § 13:1062 (2013)

A. Every owner, manager or operator of any hotel or motel shall keep a register in which shall be entered the name and address of each guest. The register shall also indicate the day, month, year and hour of arrival of each guest and the number or other identifying symbol of location of the room, dwelling unit or space rented or assigned each guest and the date that such guest departs. All such registers shall be maintained for a period of three (3) years from and after the date of entry, and shall be available at all times for inspection by any member of the police department. No person shall alter, deface or erase such a register so as to make the information recorded therein illegible or unintelligible.

B. No owner, manager, operator, employee or agent of any hotel or motel shall rent or assign any room, dwelling unit or space in said hotel or motel to any person until such time as the person shall have registered as set forth in subsection A of this section.

C. No owner, manager, operator, employee or agent of any hotel or motel shall rent any guest room or dwelling unit in such hotel or motel more than once within a eighteen-hour period. Under no circumstances shall any room be rented on an hourly basis or for an hourly rate.

D. Any person convicted of violating the provisions of this section, shall be fined not less than three hundred dollars ($300.00) and not more than

five hundred dollars ($500.00) or imprisoned for not more than six (6) months, or both, at the discretion of the court.

Burlington, N.C., Code § 23-41 (2010)

* * *

(e) The register required by this section shall be maintained by the manager of said business for one (1) year of the date of rental and subject to inspection at any reasonable time by the chief of police or his designee, fire chief or his designee, or chief building inspector or his designee while in the performance of his duties.

(f) The guest vehicle parking area of any business licensed the under this section shall be accessible at all times to the chief of police, fire chief, chief building inspector or their designees.

* * *

(i) *Penalty. Any violation of subsections (a) through (h) of this section shall be a misdemeanor, punishable by imprisonment up to thirty (30) days, or a fine of up to five hundred dollars ($500.00) in the discretion of the court.*

Calumet City, Ill., Code § 54-1356 (2013)

Each hotel proprietor, and each operator therein, shall keep or cause to be kept a register of guests as required by state law. Such register or list shall be available for inspection by any member of the police department at any time.

Chesapeake, Va., Code § 19-318 (2013)

(a) Every person operating any hotel shall keep and maintain therein a register containing the name and home address of each person renting or occupying a room therein. Such registered shall be signed by the person renting a room or someone by his or her authority, and the proprietor of such hotel shall thereupon write, opposite such name so registered, the number of the room assigned to and occupied by such guest, together with the time when such room is rented. Until all of the aforesaid entries have been made in such register, in ink, no guest shall be permitted to occupy privately any room in such hotel. In the event a block of more than two rooms are being rented for a convention or industrial development activities, the register may be signed by convention coordinator or sponsoring agency.

(b) When the occupant of a room so rented shall quit and surrender the same, it shall be the duty of the proprietor of the hotel to enter the time thereof, if known, in such register opposite the name of such occupant.

(c) The register required by this section shall be subject to inspection at any and all reasonable times by the chief of police or by any police officer.

(d) A copy of registry information will be supplied by the person having authority for the operation of the hotel to the chief of police or any police officer upon request.

Chino, Cal., Code § 98-06 (1998)

Every operator of any public lodging facility in the city shall at all times keep and maintain a register wherein all guests, roomers or lodgers shall print and sign their names upon their procurement of a room. The operator shall verify the identity of the person procuring the room with a valid driver's license or other reliable photo identification and shall record the driver's license number or identification number next to the person's signature. The operator shall also show the date and time the room was procured, the home address of each guest or person renting or occupying a room or rooms, and the make, year and license number of the vehicle of such person, and the state in which such vehicle is licensed. Until all of the aforesaid entries have been made in such register, no guest shall be permitted to occupy any room in such public lodging facility. The operator of such facility shall write opposite such name or names so registered the number of each room assigned to and occupied by each such guest. The register shall be kept in a conspicuous place in the public lodging facility and shall at all times be open to inspection by any police officer and by any designated representative of the city.

Columbia, S.C., Code § 11-3 (2012)

(a) *Suspicious characters, disorderly conduct, etc., to be reported to police.* All persons renting rooms or furnishing board and lodging as provided in this section shall report to the police immediately any suspicious character who may apply for rooms or board, and also any disorderly persons or disorderly conduct, or report any

suspicious conduct on the part of any person to whom rooms or board may have been supplied.

(b) *Guest register required.* Every person operating a hotel, motel or other place of public accommodation shall keep a register of guests and other persons staying at such place.

(c) *Information to be shown on register.* Every register of guests required by subsection (b) of this section shall show the signature of the guest, written in ink, and the street and home address of each and every guest.

(d) *Tampering with entries in register.* Erasures or alterations on or in the register of guests required by the provisions of this section shall not be permitted or made for any purpose.

(e) *Inspection of register.* Every register of guests required by the provisions of this section shall be open for inspection of the police or any other proper officer at any time.

Crete, Ill., Code § 12-456 (2011)

It shall be unlawful to knowingly permit any fugitive from justice to stay in any rooming house or hotel. Each hotel proprietor shall keep or cause to be kept a register of guests as required by state law, and each operator of a rooming house shall keep a list of all persons staying therein. Such registration or list shall be available for inspection by any member of the police department at any time.

Denver, Colo., Code § 33-17 (2013)

(a) Every person conducting any hotel, lodging house, rooming house or other place where transients are accommodated whatsoever in the city shall, at all times, keep and maintain therein a standard hotel register, in which shall be inscribed in ink or indelible pencil the name and home street and town address of each and every guest or person renting or occupying a room therein. Such register shall be signed by each occupant of a room, or by the person renting same, for themselves or on behalf of such persons for whom the person is renting the same, and the proprietor or person in charge of such hotel, lodging house, rooming house or other place where transients are accommodated, or an agent, shall thereupon write opposite such name so registered, the number of each room assigned to and occupied by each guest, together with the time when such room was rented; and until all of the aforesaid entries shall have been made in such register, no such guest shall be suffered or permitted to occupy privately any room in such house.

(b) When the occupant of each room so rented shall quit and surrender the same it shall be the further duty of the proprietor or person in charge of such hotel or house, or an agent, to enter the time thereof in such register opposite the name of such occupant.

(c) Such register shall be kept at all times open to the inspection of any guest of such hotel, lodging house, rooming house or other place where

transients are accommodated, wherein such register is kept and of any police officer or other public officer of the city.

Downey, Cal., Code § 775 (1984)

Every owner, keeper, or proprietor of any lodging house, rooming house, or hotel shall keep a register wherein he shall require all guests, roomers, or lodgers to inscribe their names and motor vehicle license number, if applicable, upon their procuring lodging or a room or accommodations. Said register shall also show the day of the month and year when said name was so inscribed and the room occupied or to be occupied by said lodger, roomer, or guest. Said register shall be kept in a conspicuous place in said lodging house, rooming house, or hotel and at all times shall be open to inspection by the lodgers, roomers, or guests of said place, and the Chief of Police or any regular policeman or police detective.

East Peoria, Ill., Code § 3-15-13 (2013)

The operator of such hotel or motor court shall keep a register which shall contain the names and addresses of all persons occupying any room or suite of rooms within the hotel or motor court, and the hour and date of arrival and departure of such occupants, and the state automobile license number and license year of the vehicle or vehicles of such occupants. Said register shall be available for examination at all times by members of the city council, officers of the city police department or of state or Federal law enforcement or investigative agencies.

East Point, Ga., Code § 13-2014 (2013)

All registers of any hotel, tourist court or boardinghouse, required by the provisions of section 13-2012, shall be open to the inspection of police officers when so requested at reasonable times, and it shall be the duty of the hotel, tourist court and boardinghouse keepers to exhibit such registers to such police officers when requested to do so.

Elizabeth, N.J., Code § 5.48.030 (2013)

Such register shall be available at all times and shall be produced for inspection on demand of any police officer.

El Monte, Cal., Code § 5.48.030 (2013)

Erasures or alterations on the register required by Section 5.48.020 shall not be permitted or made for any purpose, and it is unlawful to erase a name or names or address or addresses or to permit such an erasure. Such register shall be kept in a conspicuous place, and shall be at all times open to the inspection of any guest of such house or motel and of any executive or police officer of the city.

Emeryville, Cal., Code § 82-08 (1982)

All hotels, motels, lodging houses, rooming houses and other places or establishments in the City of Emeryville where living rooms or sleeping accommodations are rented shall keep a register in which shall be entered in a legible fashion, the following information: the true names and residence address of all persons to be accommodated. The register shall show the day, month and year when such

information was entered, and the room or rooms to be occupied by such persons. It shall be unlawful for any owner, proprietor or lessee of a hotel, motel, lodging house, rooming house or other place or establishment in the City of Emeryville where living rooms or sleeping accommodations are rented, to refuse or neglect to comply with the requirements hereinabove set forth....Such registration shall at all times be open for inspection by the Chief of Police or his authorized representative.

Fremont, Cal., Code § 3-8200 (1990)

No person shall provide sleeping accommodations in any hotel, inn, motel, auto camp, public rooming or lodging house, or other similar place within the city unless the person requesting such accommodation shall have filled out a register with at least the following information: names and home addresses of all persons to be accommodated, the make, type and license number of any automobile, trailer or other vehicle, and the state in which such vehicle or vehicles is or are registered and the year of registration....Such register shall at all times be available for examination by any policeman of the city and by any other duly authorized peace officer or law enforcement officer of the state, federal or any local government.

Fresno, Cal., Code § 9-105 (2013)

(a) Every person within the city who keeps, maintains or controls a hotel or lodging house shall provide, keep and maintain a public register, and shall require every person who rents or occupies a room in such hotel or lodging house to write in said register his name and

place of residence. Such registration shall be made upon a page of such register properly dated with reference to the day of the year, month and week, and at the time the person rents or arranges to occupy a room.

(b) Such hotel or lodging house register so kept shall be open to the public at any and all reasonable hours, and the pages thereof shall, upon demand, be open for inspection or investigation by any member of the Police Department or other peace officer of the city, immediately upon demand having been made by such peace officer. (Orig. Ord. 1076).

Glendale, Cal., Code § 5271 (2001)

Every manager or person in control of any hotel in the city shall keep a register for the registration of transient guests. The guest register shall at all times be open and subject to reasonable inspection by city officials or by any law enforcement officer in the city.

Granite City, Ill., Code § 5.100.060 (2012)

It is unlawful to knowingly permit any fugitive from justice to stay in any rooming house or hotel. Each hotel proprietor shall keep or cause to be kept a register of guests as required by state law, and each operator of a rooming house shall keep a list of all persons staying therein. Such register or list shall be available for inspection by any member of the police department at an time.

Hampton, Va., Code § 16.1-4 (2013)

(a) Every person conducting any hotel in the city, where rooms are let for less than a week, shall at all times keep and maintain therein a guest register, with the name and home address of each guest or person renting or occupying a room therein for less than a week.

(b) Each person renting a room shall sign the register, provide personal identification, and list each person who will at any time visit or occupy the room.

(c) The proprietor of such hotel or his agent, shall thereupon write opposite such names so registered the number of the room assigned to and occupied by such guests, together with the time for which such room is rented. Until all of the aforesaid entries have been made in such register, no guest shall be permitted to occupy privately any room in such hotel.

(d) When the occupant of a room so rented pursuant to this section shall quit and surrender the same, it shall be the duty of the proprietor of the hotel, or his agent, to enter the time thereof in the register kept under this section, opposite the name of such occupant.

(e) The register required by this section shall be kept at all times open to the inspection of any police officer in the course of police business.

(f) No person conducting any hotel in the city shall be guilty of a violation of this section if such person has no knowledge of an undisclosed

occupant, guest or visitor of a room and has complied, in good faith, with the requirements of this section.

Henderson, Nev., Code § 8.28.010 (2014)

Every person within the limits of the city who keeps, maintains or controls any hotel, rooming house or lodging house, shall provide, keep and maintain a public register, and shall require every person who rents or occupies a room in such hotel, rooming house or lodging house to register his name and place of residence. Such registration shall the day of the year, month and week, and the time of day the person rents, or arranges to occupy a room shall also be therein entered.

Such hotel, rooming house or lodging house register so kept shall, upon demand, be open for inspection or investigation by any member of the police force or other peace officer of the city, business license officer or code enforcement officer immediately upon demand having been made by any such member of the police force or other officer.

Hoffman Estates, Ill., Code § 8-8-7 (2013)

A. *Definition.* The term "hotel" when used in this Code shall mean every building, structure or any part thereof used, kept or maintained as or advertised or held out to the public to be an inn, hotel, family hotel, apartment hotel, lodging house, motel, dormitory or other place where sleeping accommodations are furnished or maintained for hire or rent for 20 or more transient persons, whether with or without meals.

B. *License Required.* No person shall conduct, keep, manager or operate, or cause to be conducted, kept manager or operated, a hotel without obtaining a license therefor.

C. *Register.* The proprietor, manager, keeper or clerk of every hotel shall keep a register in which shall be entered the name, and if a transient, the permanent address and license plate number, if any, of every person who becomes a roomer, boarder, lodger or paying guest therein. Such register shall also show the number of the room occupied by such person, the date of his arrival and the period for which the guest engaged board or lodging. The register shall be accessible, without charge, to the Police Chief or any police officer.

D. *Regulations.* Each applicant shall comply with all applicable regulations of the Department of Code Enforcement, Police Department, Fire Department.

Homewood, Ala., Code §§ 14-20 and 14-22 (2013)

§ 14-20

(a) Every person, proprietor, owner, operator or lessee, or agent, conducting any hotel or motel in the city shall at all times keep and maintain at the main or central entrance or office thereof a book or register in which each patron or occupant occupying any room or accommodations therein shall inscribe with ink or indelible pencil the name, age and home address of each patron occupying any such room or accommodations in any such place. Such book or register shall be signed at the main or central entrance or office of any such hotel or motel, and

not elsewhere on the premises, by each patron occupying any room or accommodations of any sort in any of above-named places, and the proprietor, owner, operator or lessee, of any such hotel or motel, or agent, shall thereupon write opposite such name so registered the license number and make of motor vehicle, if any, in which such patron or occupant traveled to such hotel or motel, the date and hour of arrival and the room or quarters rented or assigned to such patron or occupant.

* * *

(d) The book or register of any such hotel or motel shall be open to inspection at all times by the chief of police or any police officer of the city on duty at the time of any such inspection, for a period of two (2) years after the making of each entry in such book or register.

§ 14-22

It shall be the duty of the proprietor, owner, operator or lessee, or agent, of any hotel or motel to keep and preserve the book or register in which the entries are required to be made for a period of two (2) years from the date of each such entry and to keep the same available and open at all times during such period of time for inspection by the chief of police or any duly appointed police officer of the city on duty at the time of such inspection.

Independence, Kan., Code §§ 62-117 and 62-118 (2013)

§ 62-117

The register required by this article shall be kept in the lobby, public room or other office of the hotel, lodginghouse, roominghouse or restaurant and shall be open for inspection to any sheriff, deputy sheriff or police officer at any time of the day or night, upon the request of such sheriff, deputy sheriff or police officer.

§ 62-118

It shall be unlawful for any person to register at any hotel, lodginghouse, roominghouse or restaurant with rooms in connection therewith under an assumed name or give a false or fictitious address. It is unlawful for any person required to keep such register to fail to do so or to fail to request persons registering to give the information required on the register or to fail or refuse to permit the inspection thereof at any time by any sheriff or police officer of the city. Any person who violates this section shall, upon conviction thereof, be punished as provided in section 1-14.

Indianapolis, Ind., Code § 901-4 (2013)

Any person owning, operating or managing any hotel shall keep a permanent record of each guest receiving lodging, which record shall be made available upon demand for inspection by any police officer.

Las Vegas, Nev., Code § 10.36.040 (2013)

(A) Every person within the limits of the City, who keeps, maintains or controls any hotel, roominghouse or lodginghouse, shall provide,

keep and maintain a public register, and shall require every person who rents or occupies a room in such hotel, roominghouse or lodginghouse to write in such register his name and place of residence. Such registration shall be made on a page of the register properly dated with reference to the day of the year, month and week, and the time of day the person rents or arranges to occupy a room shall also be entered.

(B) Such hotel, roominghouse, or lodginghouse register so kept shall be open to the public at any and all reasonable hours, and the pages thereof shall, upon demand, be open for inspection or investigation by any member of the Police Force or other Peace Officer of the City, immediately upon demand having been made by any such member of the Police Force or other Peace Officer.

Longmont, Colo., Code § 6.40.020 (2013)

In all buildings or structures in the city kept, used or maintained as, or held out to the public to be, a hotel, a full and complete register must be kept of any and all persons using any rooms for lodging purposes, which register shall be open to inspection by police officers. The person having charge of any such hotel, as defined at section 6.40.010, shall provide a suitable book or card for the purpose of keeping and effecting such registry, which book shall set forth the name of the person, date of registry, automobile license number, home address of the person, and the number of the room occupied, the number of such room being plainly designated upon the door for the main ingress and egress therefrom. Before any room or lodging is

furnished to a person, such person shall register and write his name and address in the registry.

Mesa, Ariz., Code § 5033 (2011)

It is unlawful for any operator of a hotel to fail to maintain the registration records required by this Chapter or to fail to make the records available to the Mesa Police Department for inspection or investigation or any other law enforcement purpose upon demand.

Metro Government of Nashville and Davidson County, Tenn., Code § 6.28.010 (2013)

A. Every person operating a hotel or roominghouse, engaged in the business of lodging transients, shall keep a book or register in which shall be listed the name and address of each of its guests or lodgers, together with the date of arrival and the date of departure.

B. Such book or register shall be kept so as to show arrivals and departures of guests for a period of at least six months.

C. Every person operating a hotel or roominghouse and the employees thereof shall exhibit such book or register to any member of the police department upon the written request of the chief of police or the chief of the detective department.

Miles City, Mont., Code § 6-268 (2013)

The register of every person conducting or operating an overnight accommodation within the city limits shall be open to the inspection of any member of the city police department or other such authorized person at any time.

Minneapolis, Minn., Code § 244.1260 (2013)

Every person to whom a hotel license has been issued shall at all times keep a hotel register within the hotel, in which shall be written the names of all occupants renting or occupying hotel units in such hotel. The register shall be signed by the persons renting a hotel unit. After the name or names of persons renting or occupying any hotel unit the operator, or the operator's agent, shall write the number of the room or rooms which each person is to occupy, together with the date and hour when such room or rooms are rented, all of which shall be done before such person is permitted to occupy such room or rooms. The register shall be at all times open to inspection by the chief of police, commissioner of health, the director of inspections and the chief of the fire prevention bureau or their authorized representatives. (Code 1960, As Amend., § 78.070; 76-Or-184, § 1, 10-29-76; 78-Or-244, § 47, 11-22-78; Pet. No. 252271, § 28, 5-11-90)

Modesto, Cal., Code § 4-7.302 (2013)

The hotel or lodging house register required by Section 4-7.301 shall be open to the public at any and all reasonable hours, and the pages thereof shall, upon demand be open to inspection or investigation by any member of the Police Force or other peace officer of the City, immediately upon demand having been made by such peace officers.

Muskogee, Okla., Code § 22-15 (2013)

Every hotel or roominghouse in the city shall keep a daily register or record upon which each guest shall be required to write his name and address. Opposite the signature and address shall appear the room to which the guest is assigned. The register or record shall at all times be open and available for inspection by any police officer.

Narragansett, R.I., Code § 14-263 (2012)

Every operator or keeper of a hotel or motel, upon being licensed under the provisions of this article, shall keep a true and accurate register of all guests using or occupying his licensed premises, which register shall show the name of each guest, and the date of arrival and departure of each guest. The register shall at all reasonable times be open to the inspection of any police officer in the town.

Niles, Ill., Code §§ 22-300 and 22-302 (2013)

§ 22-300

The operator of a motel shall keep a register which shall contain the names and addresses of all persons occupying any room or suite of rooms within the motel and the hour and date of arrival and departure of guests. The register shall include the state automobile license number. The register shall be available for examination at all times by the police department.

§ 22-302

It shall be the duty of the police department of the village to from time to time check the register referred to in section 22-301. If, after such investigation, it is

determined that the owner of the car is different than the person who has signed the register as the owner, then such person shall be guilty of a misdemeanor.

Nogales, Ariz., Code § 13-8 (2013)

(a) It shall be unlawful for any owner, operator or person in charge of any hotel, roominghouse, lodginghouse, auto trailer court or auto court within the city to furnish accommodations therein to any person without first entering in a register to be kept for that purpose the name and address of each guest so furnished with accommodations and requiring the person requesting such accommodations to affix the date and signature and place of residence to such register.

(b) Such register shall be made available for the inspection of any police officer of the city at all times upon request.

(c) It shall be unlawful for any person to enter in the register of guests of any hotel, roominghouse, lodginghouse, auto trailer court or auto court within the city a false or fictitious date, name or place of residence, knowing it to be false.

North Las Vegas, Nev., Code § 9.08.030 (2013)

A. Definitions. For the purpose of this section, the words set out in this section are defined as follows:

1. "Prostitution" means an act by any person, performed for a fee, of engaging in sexual

intercourse, oral-genital contact, or any touching of the sexual organs or other intimate parts of another person for the purpose of arousing or gratifying the sexual desire of either person.

2. "Public place" means any street, sidewalk, bridge, alley or alleyway, plaza, park, driveway, parking lot or transportation facility or the doorways and entrance ways to any building that fronts on any of the aforesaid places, or a motor vehicle in or on any such place.

B. Loitering for Prostitution. Any person who remains or wanders about in a public place, or on private property not owned by or in the lawful control of such person, and repeatedly beckons to, or repeatedly stops, or repeatedly attempts to stop, or repeatedly attempts to engage passers-by in conversation, or repeatedly stops or attempts to stop motor vehicles, or repeatedly interferes with the free passage of other persons, for the purpose of prostitution, or of patronizing a person engaged in prostitution, shall be guilty of a misdemeanor.

C. Room Register of Lodging Places.

1. Every person within the limits of the city who keeps, maintains or controls any hotel, rooming house, or lodging house shall provide, keep and maintain a public register, and shall require every person who rents, or occupies a room in such hotel, rooming house or lodging house, to write in such register his

name and place of residence. Such registration shall be made on a page of the register, properly dated, with reference to the day of the year, month, and week, and the time of day the person rents or arranges to occupy a room shall also be entered.

2. Such hotel, rooming house or lodging house register so kept shall be open to the public at any and all reasonable hours, and the pages thereof shall be open for inspection or investigation by any member of the police department or other peace officer immediately upon demand by any such member of the police department or other peace officer.

Northport, Ala., Code § 54-638 (2011)

The manager of any hotel shall permit the examination by the police, at all hours when such manager is at such manager's office or at the room where the register is kept, of all rooms in the hotel which at the time are not actually occupied by a guest and of all rooms which do not show on the register as being occupied by a guest.

Oklahoma City, Okla., Code § 13-144 (2013)

The operator of a motel or tourist camp shall keep a record of all persons who rent or use any camp buildings. The record shall contain the names of said persons, and their home addresses. The record shall be open to inspection by any officer of the Police Department.

Perryville, Mo., Code § 9.04.300 (2013)

A. The owner, proprietor, manager or other person in charge of any hotel, motel, lodging house, rooming house or other place whatsoever where transients are accommodated shall at all times require a valid photo identification document and keep a register in which shall be ascribed the names of all of the guests or persons renting or occupying rooms in such establishment. The register shall be signed by the person renting a room or by someone under his or her direction. The register shall include the full name of the person, his or her home or business address, driver's license number, a complete description of his or her vehicle, including the license plate number of the vehicle and the state issuing the license plate. Such registration shall be made and, after the names and information are ascribed in the register, the manager or other person in charge, or his or her agent, shall write the number of the room such guest or person is to occupy, together with the time when such room is rented, so as to identify the room occupied by the person registering. All of the foregoing shall be done before any guest is permitted to occupy a room. Such register shall at all times be open to inspection by any police officer of the city, county, state or federal government. A registration will not be required for private meeting rooms, banquet facilities, group sales events, weddings or hotel accommodations utilized by pre-registered corporate agencies.

B. No person shall write or cause to be written or knowingly permit to be written in any register in any hotel, motel, lodging house, rooming house or other place whatsoever where transients are accommodated in the city any other or different name or designation than the true name of the person so registered therein or the name by which the person is generally known.

C. Failure to comply with this section is a misdemeanor and shall be punishable as provided in Section 1.16.010.

Pleasant Hill, Cal., Code § 866 (2012)

Each person operating a hotel or motel in the city shall require each guest to register the following information before occupying a room:

1. Name and home or business address of each occupant, except for children under age 18. The hotel operator shall require photographic identification to confirm the identity.

2. The make, model and license number and state of registration of any vehicle driven by the guest. However, a hotel with pay parking is exempt from this requirement.

3. The date of registration and number of days the guest is staying.

4. The room number where the guest is staying....

The hotel or motel operator shall retain the registration information on the premises for one year. The registration information must be available for inspection by the police department at any time.

Port Huron, Mich., Code § 12-252 (2013)

Every person in charge of a hotel or motel or his agent, servant or employee shall provide and maintain a register in which shall be inscribed, in ink, at the time of arrival, the correct name of every guest renting or occupying a room, together with the home street and city address of each such guest, and the number of the space assigned, together with the time when such was rented. When any guest shall terminate his stay, the time thereof shall be entered in the register. Such register shall be open to inspection to police and fire officers on official business.

Richmond, Cal., Code § 11.40.010 (2013)

Every owner, keeper or proprietor of any lodging house, rooming house or hotel in the City of Richmond shall, from and after the adoption of this chapter, keep a register wherein he shall require all guests, roomers or lodgers to inscribe their names upon their procuring lodgings, or a room or rooms, or accommodations in such lodging house, rooming house or hotel. The said register shall also show the time when said name was inscribed, meaning the time of the day, also the day, the month and the year, also the room or rooms occupied or to be occupied by said lodger, or roomer or guest in such lodging house, or rooming house or hotel. Said register shall be kept in a conspicuous place in said lodging house, rooming house or hotel, and shall at all times be open to inspection by the lodgers, roomers or guests of said lodging house, rooming house or hotel, and to the Chief of Police or any regular policeman or police detective of the City of Richmond or any peace officer of the State of California.

Richmond, Va., Code § 18-39 (2011)

(a) Every person who operates a motel or hotel where rooms or units are let to the public shall at all times keep and maintain therein a guest register in which shall be inscribed, with ink or indelible pencil, or entered into a computer or other electronic-based guest registry either the name and home or business address of each guest or person age 14 years or older renting or occupying a room or the name of the organization making the reservation for the guest or person age 14 years or older, as well as the guest's vehicle description and license plate information. Such register shall be signed by the person renting a room or confirmed by a computer entry or other electronic database entry by an authorized employee of the hotel or motel. The proprietor of such hotel or motel or the proprietor's agent shall thereupon write with ink or indelible pencil or enter into a computer or other electronic database or data entry system opposite such name so registered the number of each room assigned to and occupied by such guest, together with the date when such room is rented. Until all of the entries have been made in such register, no guest shall be suffered or permitted to occupy privately any room in such motel or hotel. When the occupant of a room or space so rented shall vacate and surrender the room, it shall be the further duty of the proprietor of the hotel or motel or the proprietor's agent to maintain for one year a record of the date when such room was vacated and surrendered.

(b) The guest register required by this section shall be subject to inspection at any and all reasonable times by the chief of police or by any police officer in the performance of such officer's duties.

(c) The guest vehicle parking area of every hotel or motel shall be accessible at all times to any police officer in the performance of the police officer's duties.

Rocklin, Cal., Code § 5.36.030 (2013)

The register shall be available and shall be presented for examination upon request of the chief of police, any sworn police officer of the city, and any other person with authority to exercise peace officer powers within the city as authorized by the chief of police.

St. Louis, Mo., Code § 25.32.510 (2012)

905.7 Every person to whom a boarding house, rooming house, dormitory or hotel permit has been issued shall at all times keep a standard hotel register within such house in which shall be inscribed the names of all occupants renting or occupying rooming units in such house. The register shall be signed by the person renting such unit. After the name or names of persons renting or occupying such unit, the applicant, or the applicant's agent, shall write the number of the room or rooms which each person is to occupy, together with the date and hour when such room or rooms are rented. All of which shall be done before such person is permitted to occupy such room or rooms. The register shall be at all times open to inspection by the building

official, Health Commissioner or fire official of the City of Saint Louis or Police Department.

Salinas, Cal., Code § 21-350 (2013)

(a) The chief of police and any police officer or officers specifically so designated by the chief, shall have access at all times to all rooming houses, lodging houses and hotels (except the private room of a guest, unless so authorized by other laws or ordinances) for the purpose of investigating any complaint or enforcing any law, ordinance or regulation relating to gaming, prostitution, fornication, lewdness, lasciviousness or immoral conduct.

(b) The hotel record shall be made available to any law enforcement officer for inspection. Whenever possible, the inspection shall be conducted at a time and in a manner that minimizes any interference with the operation of the business.

San Antonio, Tex., Code § 15-83 (1959)

(a) No person registering in a hotel shall do so or attempt to do so under any false name or identity. No person registering in a hotel shall present for the purpose of registration, false identification or any identification which misrepresents or fails to disclose the registrant's true identity.

(b) It shall be the duty of the owner or operator of any hotel as defined in this chapter to keep, in a format chosen by the hotel sufficient to comply with the record keeping requirements set out in this ordinance, a register, of persons

accommodated in such establishment for the purpose of verifying registrants' identities. Such register shall include, for all guest rooms and guest stays, either:

(1) The name of the registrant, the type of official photo identification presented and any personal identification number contained thereupon, the registrant's address, and the expected duration of the registrant's stay in such establishment; or, in the alternative,

(2) Documentation that the person guaranteed payment using a valid credit card issued in the name of the registrant as provided by the registrant, which at the time of registration, was verified through the hotel's customary credit card verification procedures.

No such owner or operator, or his employee, agent or representative shall knowingly write, cause to be written or permit to be written, in any register in any such hotel any other or different name or designation than the true name of the person so registered therein, or the name by which such person is generally known.

(c) Such record or register shall be available at all times for inspection by any officer of the police department of the city, and maintained for a period of two (2) years.

(d) Any person who shall violate any provision of this section shall be guilty of a class C misdemeanor and shall, upon conviction, be

punished by a fine of not more than five hundred dollars ($500.00).

San Diego, Cal., Code § O-16814 (1987)

Every manager or person in control of any hotel, motel, inn, boarding, lodging, transient apartment house, or auto court or trailer park in the City of San Diego shall keep a register for the registration of transient guests. Such register shall be preserved for at least three (3) years and shall at all times be subject to inspection by any law enforcement officer of the City of San Diego.

San Francisco, Cal., Police Code § 919 (2011)

The owner, manager or person in charge of any hotel, motel, auto court, or furnished apartment house shall keep a suitable book or register cards, open to inspection by regularly employed members of a law enforcement agency, in which all occupants of hotels, motels, auto courts, and furnished apartments shall sign their names, and the number of the hotel room, motel, auto court, or furnished apartment assigned to these guests shall be indicated on the registry book or registry cards.

Santa Cruz, Cal., Code § 2014-01, § 2010-16, § 75-29 (1975)

Every person who owns or operates any establishment subject to this chapter shall keep a register of persons who board or lodge in such establishment, in which the owner, manager or other person having the management or control of such establishment shall require any such person boarding or lodging thereat or therein to register his or her name

and address, and in which such owner or manager shall enter the number of the apartment or room occupied by such guest...Guest registries maintained pursuant to this section shall be available for immediate review and inspection upon request by any member of the Santa Cruz Police Department.

Seattle, Wash., Code § 6.98.020 (2008)

Everyone operating, managing or keeping a hotel as defined in Section 6.98.010 shall require registration of each guest at the time of his or her arrival on a register kept for that purpose and shall require identification of any adult guest whose room has been paid for in cash, including money order, traveler check or personal checks, or by voucher at the time of registration. Such identification shall be in a valid and current form issued by a governmental entity. A photocopy of such identification shall be maintained by the hotel or the identifying information and form of identification shall be transposed into the hotel registration record. Such record shall be kept available for inspection by any peace officer at any reasonable time, or in a police emergency at any time of day or night. Provided, that before such inspection the peace officer must have individualized or particularized suspicion of illegal activity by the guest or in or nearby the room. No guest shall write or cause to be written in a hotel register any false information or name other than his or her true name. For any guest taking occupancy through a prearranged advanced reservation in his or her name, name of a corporation, business, association or any other entity, the hotel shall require identification of the specific guest at the time of registration. PROVIDED that said hotel need not photocopy or record the

identification of a person whose personal or business credit card (containing a name and expiration date) has been verified as valid in advance of the registration.

South Beloit, Ill., Code § 18-127 (2012)

Each hotel proprietor shall keep a register of guests, as required by state law, and each operator of a roominghouse shall keep a list of all persons staying therein. Such registration or list shall be available for inspection by any member of the police department at any time.

South San Francisco, Cal., Code § 1470-2013 (2013)

Every operator of a hotel, as defined by this chapter, shall keep a register in which the following information shall be entered legibly, either in electronic, ink, or typewritten form, prior to the room being furnished or rented to a guest: (a) the true names and residence addresses for each guest; and (b) the make, type and license number of any vehicle under the control of the guest, if the vehicle will be parked on hotel premises. The register shall also show the day, month, and year when such information was entered, the day, month and year of guest check-in, and the room or rooms to be occupied by such persons. It is unlawful for any operator to refuse or neglect to comply with the requirements of this chapter....The Register shall be made available to any officer of the South San Francisco Police Department. Whenever possible, the inspection shall be conducted at a time and in a manner that minimizes any interference with the operation of the business.

Sparks, Nev., Code § 5.52.040 (2013)

Every register or registration system kept in compliance with the provisions of this chapter shall, upon demand, be open for inspection or investigation by the chief of police, or his authorized agent, or for the inspection or investigation of any of the military police or any officer in any of the armed, naval or military services of the United States of America, or any agent of the Federal Bureau of Investigation, at any and all times.

Steger, Ill., Code § 22-552 (2013)

No person shall knowingly permit any fugitive from justice to stay in any roominghouse or hotel. Each hotel proprietor shall keep or cause to be kept a register of guests as required by state law, and each operator of a roominghouse shall keep a list of all persons staying therein. Such registration or list shall be available for inspection by any member of the police department at any time.

Tarrant, Ala., Code § 12-4 (2013)

(a) Every person conducting any lodginghouse, hotel, motel, inn, tourist home, or boardinghouse in the city shall at all times keep and maintain therein a book or register, in which shall be inscribed with ink or indelible pencil the name and home address of each guest or person renting or occupying a room therein. Such register shall be signed by the person renting a room, or someone authorized by such person, and the proprietor of such lodginghouse, hotel, motel, inn, tourist home, or boardinghouse, or such proprietor's agent, shall thereupon write

opposite such name so registered the number of each room assigned to and occupied by each guest, together with the time when such room is rented, and until all of the aforesaid entries shall have been made in such register, no guest shall occupy or be suffered or permitted to occupy privately any room in such house. When the occupant of each room so rented shall quit and surrender the same, the proprietor of such lodginghouse, hotel, motel, inn, tourist home or boardinghouse, or such proprietor's agent, shall enter the time thereof in such register opposite the name of such occupant. Such register shall be kept at all times open to the inspection of any guest of such lodginghouse, hotel, motel, inn, tourist home or boardinghouse wherein such register is kept and of any executive or police officer of the city.

(b) It shall be unlawful for any person to write, or cause to be written, or knowingly permit to be written, in any register in any lodginghouse, hotel, motel, inn, tourist home or boardinghouse in the city, any other or different name or designation than the true name of the person registering therein, or the name by which such person is generally known.

Trenton, Mich., Code § 22-174 (2014)

Every holder of a license required by this article shall provide and maintain, by digital process or bound volume, the name and home address of any person, other than members of the family as listed in the application for the license, occupying the premises or any part thereof. The register shall also show the make

and license number of any motor vehicle owned or used by each registrant. The register shall be maintained in the premises in plain view and in a convenient place near the main entrance and shall be submitted upon demand to any official or police officer of the city or to any police officer of the state.

Tuscaloosa, Ala., Code § 17-62 (2013)

The manager of any hotel shall permit the examination by the police, at all hours when such manager is at such manager's office or at the room where the register is kept, of all rooms in the hotel which, at the time, are not actually occupied by a guest and of all rooms which do not show on the register as being occupied by a guest.

Warren, Mich., Code § 17-78 (2013)

(a) Every licensee or his agent, servant or employee, under this article shall provide and maintain a register in which shall be inscribed, in ink, at the time of arrival, the correct name of every guest renting or occupying a room, together with the home street and city address of each such guest, and the number of the space assigned, together with the time when such was rented. When any guest shall terminate his stay, it shall be the duty of the licensee or his agent, servant or employee, to see to it that the time thereof is entered in the register. Such register shall be open to inspection to police and fire officers on official business.

(b) Whenever a licensee or his agent, servant or employee knows or has reasonable cause for believing that any person has inscribed a false

name or given false information in such register, it shall be his duty to forthwith notify the police department of such fact.

(c) It shall be unlawful for any person to write or cause or permit to be written in any hotel or motel register any other or different name or designation than the true name of the person so registered.

Warrensburg, Mo., Code § 14-3 (2013)

The registration book or register of guests required by section 14-1 to be kept by every hotel, motel, boarding house or rooming house in the city shall be kept open and made available for inspection by all police officers. It shall be unlawful for the owner, proprietor, manager or clerk of such hotel, motel, boarding house or rooming house to refuse to allow or permit any police officer to inspect such registration book or register of guests.

Waycross, Ga., Code § 22-10 (2013)

All hotel and boardinghouse proprietors shall keep a register showing the name, age and residence of all boarders kept by them and such register shall be open to inspection by the chief of police. Any person who shall violate any of the provisions of this section shall be punished as provided in section 1-6 of this Code.

West Milwaukee, Wis., Code § 14-506 (2012)

* * *

(b) It shall be unlawful to knowingly permit any fugitive from justice to stay in any roominghouse or hotel. Each hotel proprietor shall keep or cause to be kept a register of guests as required

by law, and each operator of a roominghouse shall keep a list of all persons staying in the roominghouse. Such registration or list shall be available for inspection by any member of the police department at any time.

* * *

Wichita, Kan., Code §§ 5.38.035 and 5.38.040 (2013)

§ 5.38.035

Any employee of a hotel, rooming house, apartment house, or any other place within the corporate limits of the city which caters to and permits transient guests to occupy a room, who resides or lives upon the premises shall be required to register with the proprietor or manager of said hotel, rooming house, or apartment house, and a suitable register will be maintained by said proprietor or manager and shall at all times be kept open to the inspection of any member of the police department upon request.

§ 5.38.040

The register required to be kept by Section 5.38.020, and all other registers maintained by any hotel, rooming house or apartment house shall at all times be kept open to the inspection of any member of the police department.

OPPOSITION BRIEF

Supreme Court, U.S.
FILED
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No. 13-1175

IN THE

Supreme Court of the United States

CITY OF LOS ANGELES,

Petitioner,

v.

NARANJIBHAI PATEL, RAMILABEN PATEL,
LOS ANGELES LODGING ASSOCIATION,

Respondents.

On Petition for a Writ of Certiorari
to the United States Court of Appeals
for the Ninth Circuit

BRIEF IN OPPOSITION

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QUESTIONS PRESENTED

1. Whether motel owners may even attempt to bring a facial Fourth Amendment challenge against a city ordinance that authorizes warrantless, suspicionless searches of motel guest registries by the police.

2. Whether motels in Los Angeles, which are concededly not a closely regulated industry, have a reasonable expectation of privacy in motel guest registries, when such records are concededly "papers" within the meaning of the Fourth Amendment; and, if so, whether a city ordinance that authorizes warrantless, suspicionless searches of those papers violates the Fourth Amendment because it provides no pre-compliance safeguards whatsoever.

PARTIES TO THE PROCEEDING BELOW

The caption to the petition does not identify all of the parties to the dispute. Petitioner is correctly identified as the City of Los Angeles.

The respondents correctly identified in the caption are Naranjibhai Patel, Ramilaben Patel, and the Los Angeles Lodging Association.

In addition to those respondents, the following individuals were plaintiffs and appellants in the consolidated cases below, and are therefore respondents in this Court: Rajendrakumar N. Bhakta, Manjula Bhakta, Manharbhai G. Bhakta, Sarojben D. Bhakta, Praful K. Bhakta, Hitendra D. Bhakta, Pankaj Patel, Naranbhai Patel, Deepak Patel, Dinesh Patel, Jitubhai Bhakta, Ratlalbhai Patel, Ashokbhai Patel, Kamalbhai Patel, Dilip Denaplya, Sanmukh Patel, Kishor Bhakta, Raman Bhakta, Jayesh Bhakta, Mahendra Bhakta, Yogesh Patel, Sanmukh Bhakta, Pratap Bhakta, Jitendra Bhakta, Praful Patel, Nilesh Bhakta, Kiranbhaj Bhakta, Dilip Patel, Naresh Bhakta, Vijay Patel, Rambhai Patel, Pravin Bhakta, R.N. Ghandi, Hasmukh Patel, and Bharatbhai Bhakta, all of whom are named individual plaintiffs and appellants in the related and consolidated cases CV04-2192 DSF and CV03-3610 DSF.

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BRIEF IN OPPOSITION

Petitioner seeks review of the court of appeals' decision holding petitioner's motel registry inspection ordinance unconstitutional. Because the court of appeals' decision does not itself merit this Court's review, the petition attempts to reframe the case in broad terms, reaching as far as it can to manufacture 1-1 circuit splits on issues of little practical consequence. This Court should deny review.

STATEMENT OF THE CASE

Respondents own and operate motels in Los Angeles. A municipal ordinance, Los Angeles Municipal Code § 41.49, requires respondents, who are motel owners and operators in Los Angeles, to collect and keep detailed information about their guests. The ordinance further provides that the records "shall be made available to any officer of the Los Angeles Police Department for inspection." Failure to comply with the inspection requirement is a misdemeanor. *See* L.A. Mun. Code § 11.00(m). Because respondents have been and will continue to be subject to warrantless inspections under § 41.49, they brought this action under 42 U.S.C. § 1983 alleging that the ordinance violates the Fourth Amendment.

Multiple plaintiffs had challenged the constitutionality of § 41.49, and the parties filed a stipulation to consolidate and streamline the litigation. *See* Stipulation to Consolidate and Dismiss, *Patel v. City of Los Angeles*, No. 2:05-cv-01571-DSF-AJW, ECF No. 22 (Feb. 17, 2006). In addition to consolidating the cases, the stipulation dismissed without prejudice damages claims against

a number of individual defendants. *Id.* at 2. The stipulation also narrowed the claims to be decided, providing: "The parties agree that the sole issue in the consolidated action is the constitutionality of Los Angeles Municipal Code Section 41.49; that there are no damages claims; and that *Monell* claims are not at issue." *Id.*

On the eve of trial, the parties entered into a further stipulation, agreeing that certain "facts are admitted and require no proof." *See* Final Pretrial Conference Order, *Patel v. City of Los Angeles*, No. 2:05-cv-01571-DSF-AJW, ECF No. 59, at 2 (Sept. 2, 2008). Among these, petitioner admitted that respondents "have been subject and continue to be subject to searches and seizures of their motel registration records by the Los Angeles Police Department (hereinafter 'LAPD') without consent or warrant pursuant to Los Angeles Municipal Code (hereinafter 'LAMC') section 41.49 which permits law enforcement to demand inspection of motel registers at any time without consent or warrant." *Id.* at 2-3. The pretrial stipulation reiterated that "the sole issue in the consolidated action is a facial constitutional challenge to LAMC section 41.49 under the Fourth Amendment." *Id.* at 3.

In the same pretrial order, petitioner laid out its defenses to the lawsuit in detail, stating that it intended to show that there was no reasonable expectation of privacy in motel registers; that the inspection of motel registers did not infringe upon values protected by the Fourth Amendment because the contents of motel registers did not warrant constitutional protection; and that the inspections were valid administrative inspections because motels

were "closely regulated" and because the inspections were necessary to further a substantial government interest in a regulatory scheme, and limited in time, place, and scope. *Id.* at 4-5. The stipulation further provided that no additional exhibits or witnesses would be presented at trial. *Id.* at 6.

After the trial, the district court entered judgment for petitioner. It again acknowledged the concessions made in the stipulations. *See* Pet. App. 53. The court further noted that petitioner had "submit[ted] no evidence that hotels or motels in California or Los Angeles have been subjected to the same kind of pervasive and regular regulations as other recognized 'closely regulated' businesses," and thus concluded that respondents' motels were not "closely regulated," and therefore did not fall within the administrative search exception to the warrant requirement established by *New York v. Burger*, 482 U.S. 691 (1987). Pet. App. 54. Nevertheless, the district court ruled in petitioner's favor by concluding that hotels and motels do not have an ownership or possessory interest that gives rise to a privacy right in their guest registries because those registries were created in order to comply with the ordinance. *Id.* 56.

The Ninth Circuit initially affirmed, but the en banc court reversed. The court held first, and with "little difficulty," that the warrantless inspections authorized by § 41.49 constituted a Fourth Amendment "search." Pet. App. 6. Because the Fourth Amendment expressly protects "papers"—and because the guest registries are business records, which have for more than a century been regarded as "papers"—the court of appeals held that the Fourth Amendment applies. *Id.* (citing *Hale v. Henkel*, 201

U.S. 43, 76-77 (1906)). The court reasoned that the registries "are the hotel's private property, and the hotel therefore has both a possessory and an ownership interest in the records," and that these "property-based interests" create a "right to exclude others from prying into the contents of its records." *Id.* 7. For similar reasons, the majority concluded that respondents have a privacy interest in the records in addition to their independent property interest. *Id.* 8.

The court of appeals went on to decide whether the warrantless searches authorized by § 41.49 comply with the Fourth Amendment. The court assumed that § 41.49 authorizes administrative record inspections (and not searches for evidence of crime, which would ordinarily require a warrant), and assumed that it only authorized searches in the public areas of the hotel. Pet. App. 10. It concluded that even under these generous assumptions, which "give the city the benefit of the doubt at each turn," *id.* 11, the answer was "no" because "[t]he Supreme Court has made clear that, to be reasonable, an administrative record-inspection scheme must at a minimum afford an opportunity for pre-compliance judicial review, an element that § 41.49 lacks." *Id.* 9-10. The court of appeals relied on this Court's decisions in *See v. City of Seattle*, 387 U.S. 541, 544-45 (1967), and *Donovan v. Lone Steer*, Inc., 464 U.S. 408, 415 (1984), both of which emphasized the need for pre-compliance judicial review for administrative record searches. Because "Section 41.49 lacks this essential procedural safeguard against arbitrary or abusive inspection demands," it rendered hotel operators "subject to the 'unbridled discretion' of

officers in the field, who are free to choose whom to inspect, when to inspect, and the frequency with which those inspections occur." Pet. App. 12 (quoting *Marshall v. Barlow's, Inc.*, 436 U.S. 307, 323 (1978)).

The court recognized that the absence of pre-compliance judicial review would not necessarily render every search unreasonable under the Fourth Amendment. But it concluded that the requirement was necessary for "the particular searches at issue here—administrative inspections of business records in industries that are not closely regulated." *Id.* 13. Thus, because § 41.49 suffered from a "procedural deficiency" that "affects the validity of all searches authorized by" the ordinance, the court held it "facially invalid." *Id.* 13-14.

Four judges dissented in two opinions. The dissents argued first that even if respondents could have prevailed on an as-applied challenge, a facial challenge was inappropriate because there were circumstances, *e.g.*, searches with a warrant, or exigent circumstances, where the inspection of registries would be constitutional. *See* Pet. App. 17-18. The dissent relied principally on *Sibron v. New York*, 392 U.S. 40 (1968), a case that petitioner had never cited, to argue that Fourth Amendment facial challenges are disfavored. Pet. App. 16-17. The dissent also argued that there was no evidence in the record establishing that hotels generally have an expectation of privacy in the information in their guest registries. *Id.* 30.

The petition followed.

REASONS FOR DENYING THE WRIT

The petition nominally presents two questions: whether Fourth Amendment facial challenges are permitted at all; and whether hotels have a reasonable expectation of privacy in their guest registries. For each question, the best-case scenario for petitioner is a shallow and underdeveloped circuit split—the Ninth versus the Sixth Circuit for the first question, and the Ninth Circuit versus a state court for the second. Even taking the petition at face value, these conflicts would not warrant this Court's attention. Upon closer examination, the case for certiorari disintegrates altogether because the conflicts are illusory, and the questions unimportant.

I. The First Question Presented Does Not Warrant Certiorari.

The first question presented does not present a true circuit split, as the distinctions between this case and the Sixth Circuit case petitioner cites are legion. Additionally, the question presented is phrased at such a broad level of abstraction that its resolution would not meaningfully assist the lower courts in resolving the cases before them. Finally, petitioner waived its ability to bring this argument below, and cannot raise it for the first time now.

1. Petitioner argues that the decision below—which decided a Fourth Amendment question on the merits, and which contained literally no discussion of justiciability—is in conflict with *Warshak v. United States*, 532 F.3d 521, 525 (6th Cir. 2008) (en banc)—a case in which the court's analysis "start[ed]—and end[ed]—with ripeness." Yet petitioner does not argue that the challenge in this case was unripe;

instead, it contends that *Warshak* stands for the remarkable proposition that facial Fourth Amendment challenges to municipal ordinances are never permitted.

That is inaccurate. *Warshak* never stated that a court cannot hear a facial Fourth Amendment challenge to a statute. Instead, the court determined, on the facts and circumstances of that particular case, that it was not ripe for adjudication. In *Warshak*, the federal government relied on Title II of the Electronic Communications Privacy Act of 1986, Pub. L. No. 99-508, *codified as amended at* 18 U.S.C. §§ 2701-11, to read Mr. Warshak's e-mails without probable cause and without providing advance notice. *See* 532 F.3d at 523. Warshak was notified a year later, and he brought suit seeking a declaration that the statute was unconstitutional, and an injunction preventing its further enforcement. *Id.* at 524. Warshak was subsequently indicted and convicted of fraud, partially on the basis of the e-mail evidence. *Id.* at 525.

On these facts, the court of appeals held that Warshak's separate lawsuit was not ripe for adjudication. It noted that he had a ready avenue to challenge the searches that had been conducted against him—by appealing his criminal conviction and urging suppression, or by bringing a *Bivens* action against the agents who conducted the search. *See id.* at 528. However, the parallel lawsuit challenging the statute was not ripe because the court had "no idea whether the government will conduct an *ex parte* search of Warshak's e-mail account in the future and plenty of reason to doubt that it will" because the government had already

obtained the evidence that it needed to secure a conviction, and there was no evidence that it planned to search Warshak's e-mails again. *Id.* at 526. The court further noted that the reason the government had previously searched Warshak's e-mails in secret was to avoid tipping him off about its ongoing investigation; but because that investigation was concluded, the likelihood of another secret investigation was very low. *See id.* Moreover, the court was unable to determine "what e-mail accounts, or what types of e-mail accounts, the government might investigate." *Id.*

That problem was particularly salient in an electronic privacy case because the answer turned "in part on the expectations of privacy that computer users have in their e-mails—an inquiry that may well shift over time, that assuredly shifts from internet-service agreement to internet-service agreement and that requires considerable knowledge about ever-evolving technologies." *Id.* The electronic-privacy implications of the case therefore made it undesirable to litigate the constitutionality of the statute before a plan to investigate emerged.

Contrast the facts of this case. This case does not involve a federal statute that potentially applies to electronic searches of every possible type everywhere in the country; it involves a single section of a municipal ordinance, which applies only to hotel and motel guest registries in Los Angeles. This case also does not involve rapidly shifting technological and contractual realities. And in this case, petitioner stipulated that respondents have been and will continue to be subject to warrantless searches of their registries—where failure to comply is a criminal

offense. *See, e.g.*, *Susan B. Anthony List v. Driehaus*, 134 S. Ct. 2334, 2345 (2014) (finding controversy ripe when "the threat of future enforcement" was "substantial" and noncompliance carried criminal penalties). The narrowness of the factual context, and the dramatically higher probability of future enforcement, make a ripeness challenge in this case unlikely to succeed. It is unsurprising that petitioner never even raised such a challenge below, and indeed, does not purport to do so now.

To be sure, the Sixth Circuit in *Warshak* supported its reasoning with some discussion of *Sibron v. New York*, 392 U.S. 40, 59 (1968), which held that certain Fourth Amendment facial challenges are disfavored. *See Warshak*, 532 F.3d at 529. However, that citation is a far cry from adopting a rule of law stating that such challenges can never be brought. Indeed, the Sixth Circuit acknowledged that in *Berger v. New York*, 388 U.S. 41 (1967), this Court "appeared to invalidate a New York eavesdropping statute on its face." 532 F.3d at 530. *Warshak* also acknowledged that in a number of cases, this "Court has issued Fourth Amendment rulings that effectively invalidated statutes in whole or in part." *Id.* at 531 (citing *Payton v. New York*, 445 U.S. 573, 589-90, 598 & n. 46 (1980); *Torres v. Puerto Rico*, 442 U.S. 465, 471, 474 (1979)). Thus, while *Warshak* may stand for the proposition that facial challenges are not preferred (a proposition with which respondents do not quibble), it cannot mean that they are prohibited in all instances. Especially when, as here, the ordinance in question is applied consistently to authorize unconstitutional searches—indeed, the entire point of the ordinance is to permit

warrantless searches outside the bounds of normal exceptions to the warrant requirement.

2. Even if this case did present a true circuit split—which it does not—that would not justify certiorari because the question presented is unimportant. Taking the question at face value, petitioner asks this Court to decide whether a facial Fourth Amendment challenge is *ever* permitted. Petitioner's goal, at least nominally, is to establish that the answer is "no."

What would that accomplish? The decision below would be reversed. But petitioner provides no evidence that there is some epidemic of pending facial Fourth Amendment challenges that is confusing the lower courts and demanding this Court's attention. Indeed, such challenges are extremely rare—in most cases, when a facial challenge is brought, it is accompanied by an as-applied challenge, a form of challenge to which petitioner does not object.[1]

Moreover, facial challenges are already difficult to win. Many such challenges will be dismissed on

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[1] Indeed, respondents themselves could bring an as-applied challenge to § 41.49. The result of that case would be the same as this one: the ordinance would be deemed unconstitutional. Other parties could rely on that precedent to bring their own challenges to the ordinance. The outcome would be identical, but all parties would endure substantial additional effort and expense to reproduce it. The en banc dissent conceded as much. *See* Pet. App. 15 ("The Patels may be right in asserting that as a practical matter the Los Angeles Police Department has applied the ordinance to undertake searches that violate the Fourth Amendment.").

justiciability grounds, like the challenge in *Warshak*, or the challenge in *Clapper v. Amnesty International USA*, 133 S. Ct. 1138, 1146 (2013). The ones adjudicated on the merits are also unlikely to succeed because the standard for winning a facial challenge is high. But petitioner can provide no reason why, if a plaintiff meets that standard, the courts should reject his challenge anyway—which is all that the question presented seeks to establish.

The categorical prohibition on facial Fourth Amendment challenges that petitioner seeks is also flatly inconsistent with this Court's precedents. As explained above, this Court has already identified at least some circumstances where a facial Fourth Amendment challenge is appropriate. *See Berger*, 388 U.S. at 55 ("[T]he statute is deficient on its face"); *see also Skinner v. Railway Labor Executives Ass'n*, 489 U.S. 602, 614 (1989) (considering a "facial challenge" to "breath and urine tests required by private railroads," even though ultimately not finding the challenge meritorious). These cases hold that when a legislature attempts to hobble the procedural protections that the Fourth Amendment requires, the legislative enactment can be struck down. And for good reason. Imagine that a jurisdiction enacted a statute permitting general warrants, or warrantless, suspicionless searches of the home. There can be little doubt that such statutes would be unconstitutional on their face, and that their invalidation would be fully consistent with settled Fourth Amendment principles.

This Court has also authorized facial challenges in the administrative search context. In *New York v. Burger*, 482 U.S. 691 (1987), this Court set forth

three criteria that warrantless administrative searches must meet. The last of these is that "the regulatory statute must perform the two basic functions of a warrant: it must advise the owner of the commercial premises that the search is being made pursuant to the law and has a properly defined scope, and it must limit the discretion of the inspecting officers." *Id.* at 703. By its terms, this inquiry calls for an examination of the statute on its face. *See also Marshall v. Barlow's, Inc.*, 436 U.S. 307, 325 (1978) (holding that an inspection statutes was "unconstitutional insofar as it purports to authorize inspections without warrant or its equivalent" after conducting this statutory analysis).

The decision below is consistent with those principles as well. The court of appeals held that under this Court's precedents, a warrantless administrative search of business records is only permissible if the search mechanism includes a provision for pre-compliance judicial review. This Court has reached precisely that result before. *See, See v. City of Seattle*, 387 U.S. 541, 544-45 (1967) ("It is now settled that" a demand to inspect "corporate books or records . may not be made and enforced by the inspector in the field," and the party subject to search "may obtain judicial review of the reasonableness of the demand prior to suffering penalties for refusing to comply."); *Donovan v. Lone Steer, Inc.*, 464 U.S. 408, 415 (1984) (holding that a party receiving an administrative subpoena may question its reasonableness "before suffering any penalties for refusing to comply with it, by raising objections in an action in district court").

What petitioner actually wants this Court to decide is that the court of appeals misapplied the standard for facial challenges—but that question does not implicate a circuit conflict or otherwise warrant this Court's review. *See* S. Ct. R. 10 (providing that a petition is rarely granted when the asserted error consists of "the misapplication of a properly stated rule of law"). Instead of accepting that it lost because particular features of § 41.49 offend the Fourth Amendment, petitioner has sought to inflate the issue by describing it at a higher level of generality. This Court should not hesitate to burst petitioner's bubble.

3. Finally, petitioner has waived its ability to raise this issue. In its two pre-trial stipulations, petitioner conceded that the sole issue to be decided in this case is a facial challenge to § 41.49. It laid out in detail the defenses it intended to prove. Never—not once—did petitioner argue that that facial Fourth Amendment challenges are not permitted, nor did it ever cite *Sibron*. That silence continued through the trial and the appeal. Indeed, *Sibron* and its progeny were never mentioned at all in connection with this case until the eve of the en banc oral argument, when Chief Judge Kozinski issued an order requesting the parties to be prepared to address the import of that decision. The subsequent en banc majority opinion (which Chief Judge Kozinski joined), however, never discussed the issue that petitioners now seek to raise. It was mentioned only in the dissenting opinions.

Based on the procedural history of this case, the broad question whether facial Fourth Amendment challenges are permitted was certainly never pressed, and was at least arguably never passed upon. This is

because petitioner expressly—and not only impliedly—waived the point. By stipulating that the court would consider the facial challenge to the statute, and by enumerating its defenses but excluding this one, petitioner gave up any reliance on its broader argument. And because the argument is not jurisdictional, that waiver should be treated as binding—even if the availability of facial challenges is an antecedent question to whether a particular facial challenge should have succeeded. *See Mastrobuono v. Shearson Lehman Hutton, Inc.*, 514 U.S. 52, 64 n.1 (1995) (Thomas, J., dissenting) (declining to determine the appropriate standard of review, even though it was "an antecedent question," because "petitioners waived the argument that a deferential standard was appropriate").

II. The Second Question Presented Does Not Warrant Certiorari.

The second question presented is a two-parter: first, whether motels have an expectation of privacy under the Fourth Amendment in their guest registries, when the creation of those registries was required by law and an ordinance authorizes the police to inspect the registry; and second, whether, if there is a reasonable expectation of privacy in those registries, an ordinance authorizing a search of those registries is unconstitutional unless it permits pre-compliance judicial review.

The first part of this question alludes to a 1-1 split between this case and a 1987 Massachusetts Supreme Court case, *Commonwealth v. Blinn*, 503 N.E.2d 25 (Mass. 1987). That this is the best petitioner can do—contrasting a single decision from

a state court, issued twenty-seven years ago—illustrates just how rarely this issue arises, and how unimportant it is.

On closer inspection, the split with *Blinn* is illusory as well. In that case, Mr. Blinn, a motel manager in Danvers, MA, was convicted of an offense after refusing to turn over a motel guest registry for warrantless inspection. *Id.* at 26. The court held that the manager had no reasonable expectation of privacy in the registry. To reach this conclusion, it noted that businesses generally have a lesser expectation of privacy than homes, that "though not determinative," the fact that the registry was required to be kept and furnished diminished the expectation of privacy in it, and that the manager could not rely on the guests' expectations of privacy for the same reasons. *Id.* at 27. The court rejected the argument that the search was an administrative search, deciding that those standards applied only within the confines of a particular statutory framework. *See id.* at 28.

The most significant distinction between this case and *Blinn* is that in this case, the court of appeals reached an alternative holding that renders any split over reasonable expectations of privacy irrelevant. In addition to holding that respondents have an expectation of privacy in their registries, the court of appeals held that those registries are "papers" within the meaning of the Fourth Amendment, and therefore protected on a property-based rationale. This Court has recently reiterated that a property-based rationale provides an independent basis for Fourth Amendment protection. *See Florida v. Jardines*, 133 S. Ct. 1409, 1414 (2013);

United States v. Jones, 132 S. Ct. 945, 951 (2012). As the en banc majority noted, not even the dissent quibbled with the conclusion that the registries were protected "papers." *See* Pet. App. 7, 29. *Blinn* never considered, let alone addressed, that argument—and indeed it appears likely that Mr. Blinn never made it. Petitioner identifies no court that has reached a contrary result as to whether guest registries are "papers," and indeed does not even ask this Court to review that conclusion. Consequently, the second question presented amounts to nothing more than a request for an advisory opinion regarding reasonable expectations of privacy.

Additionally, *Blinn* concluded that the search in question was not an administrative search. *See* 503 N.E.2d at 28. Thus, the court in *Blinn* had no occasion to comment on whether the registry inspection statute met the constitutional standards governing such searches. This case is different. Here, the crux of *petitioner's* argument below was that "examination of hotel registers is a valid administrative inspection designed to enforce Los Angeles Municipal Code § 41.49." Petitioner's C.A. Br. 15 (capitalization altered). Petitioner acknowledged, however, that in order to take advantage of that exception, it would have to show that motels were "closely regulated"—a point on which it submitted literally no evidence. *See* Pet. App. 54. That is why the district court and the court of appeals rejected petitioner's argument. *See id.* 54, 13 n.2. Moreover, both the majority and the dissent below agreed that in order for a warrantless administrative search to be constitutional, it must

include an opportunity for pre-compliance judicial review. *See id.* 12-13, 27-28.[2]

The circuit split is also illusory because norms relating to privacy shift over time. Petitioner has not shown that *Blinn*, which arose in Danvers, Massachusetts twenty-seven years ago (when the town had a population of approximately 24,000 according to U.S. Census records), had a factual context similar to this case, which arose in Los Angeles in 2006. Here, the majority held that respondents have a legitimate expectation of privacy in the registries because "businesses do not ordinarily disclose, and are not expected to disclose, the kind of commercially sensitive information contained in the records—*e.g.*, customer lists, pricing practices, and occupancy rates." Pet. App. 7. It is unclear what norms relating to business records prevailed in Danvers in 1987, and in any event, there is no evidence that Blinn even made the argument that his registries contained business information. Instead, it appears that Blinn attempted to argue that his customers had a right to privacy that he had a right to enforce—a rationale that the majority in this case

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[2] To be sure, the dissent argued that the ordinance was not facially unconstitutional because it also permits searches pursuant to a warrant, or searches pursuant to other exceptions to the warrant requirement besides the administrative-search exception, *e.g.*, searches under exigent circumstances. Pet. App. 28. But that is beside the point, because no officer would have to rely on § 41.49 to execute one of those searches. The only work the ordinance does is to permit additional warrantless searches when well-established exceptions to the warrant requirement do not apply.

disclaimed. *Compare* 503 N.E.2d at 27 ("[T]he defendant's argument that he could withhold the register in order to protect the privacy of his guests must fail.") *with* Pet. App. 8 ("To be sure, the *guests* lack any privacy interest of their own in the hotel's records.").

In sum, although the Ninth Circuit and the Massachusetts Supreme Court reached different results as to whether particular motels in particular times and places had reasonable expectations of privacy in their guest registries, that does not amount to a disagreement on an important issue of federal law, and therefore does not warrant this Court's review.

2. In addition to not implicating a circuit split, the lower court's decision regarding expectations of privacy should be left intact because it was correct. A reasonable expectation of privacy constitutes an expectation that is subjectively held and regarded by society as reasonable. In this case, petitioner does not contend that respondents lacked a subjective expectation of privacy in their registries, and so the only question is whether that expectation was reasonable. It was. Guest registries, like other business records, contain information that businesses ordinarily do not display to the public. Moreover, as this Court explained in *New York v. Burger*, 482 U.S. 691, 699-700 (1987), "[a]n owner or operator of a business . has an expectation of privacy in commercial property, which society is prepared to consider to be reasonable," so long as the business is not "closely regulated." The fact that respondents are required to keep the records by law may play into the

reasonableness of their expectation of privacy, but it does not eliminate it altogether.

3. The second part of the second question—whether the lack of pre-compliance judicial review makes a hotel registry search ordinance unconstitutional on its face—is also not the subject of a circuit split. *Blinn* did not even reach that question because the court concluded that on the facts before it, Blinn had no legitimate expectation of privacy. And petitioner identifies no other court that has disagreed with the court of appeals on the ultimate question in this case.

4. Even if this case implicated an actual split in authority, this Court should still deny review because the second question presented is unimportant. Petitioner's argument that this case will lead to the invalidation of a broad number of hotel registry laws is overwrought. In this case, petitioner stipulated that its ordinance authorizes warrantless, suspicionless searches of business records at any time. It further refused to submit any evidence that motels are closely regulated in Los Angeles. These concessions were critical to establishing the egregious nature of the Fourth Amendment violation. But the results in other jurisdictions may vary based on different facts. The mere fact that many ordinances do not expressly mention the need for pre-compliance judicial review does not mean that authorities are not, in fact, implementing procedural safeguards that comply with the Fourth Amendment in those jurisdictions.

Equally important, the decision below did not invalidate the portion of the ordinance that requires motels to collect and keep the relevant registry

information. *See* Pet. App. 5 ("Plaintiffs do not challenge these requirements. But they do challenge § 41.49's warrantless inspection requirement."). In the court below, petitioner argued that the ordinance deters the unlawful use of hotel rooms by making sure that everybody who comes into a motel knows that his whereabouts will have been recorded. *See* Petitioner's C.A. Br. 20. Because the ruling below does not disturb the record-keeping requirement, the deterrent effect remains intact. Furthermore, there is no evidence that warrantless inspections are necessary to further petitioner's law enforcement interest. As petitioner admitted below, respondents "recognize the City's regulatory interest surrounding § 41.49 and have engaged in a practice to further the objectives of the regulatory scheme" by committing not to let their rooms for the purposes of prostitution or other criminal activity. *Id.* 19. The point of warrantless inspections is to ensure that noncompliant operators cannot doctor or destroy their registries in anticipation of an announced inspection, or while a warrant issues. But when, as here, there is no evidence that the books are being cooked, petitioner cannot explain why it even needs the ability to search without a warrant.

Moreover, the court of appeals provided petitioner with a roadmap that will permit it to enact a constitutional version of the ordinance. At most, the decision below requires petitioner to offer pre-compliance judicial review to hotels and motels in Los Angeles facing a registry inspection. That is not a bad result: it is the norm under this Court's administrative search cases, and it protects businesses from undue burdens on their rights while

imposing minimal restraints on law enforcement. *See, e.g.*, *See v. City of Seattle*, 387 U.S. 541, 544-45 (1967); *Donovan v. Lone Steer*, Inc., 464 U.S. 408, 415 (1984).

Finally, as noted by the court below, petitioner's officers remain free to inspect hotel guest registries pursuant to a warrant or one of the well-recognized exceptions to the warrant requirement, *see* Pet. App. 14, including consent, when appropriate.

CONCLUSION

For the foregoing reasons, the petition for a writ of certiorari should be denied.

Respectfully submitted,

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REPLY BRIEF

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In the Supreme Court of the United States

CITY OF LOS ANGELES,
Petitioner,

v.

NARANJIBHAI PATEL, RAMILABEN PATEL, LOS ANGELES LODGING ASSOCIATION, et al.,
Respondents.

On Petition for Writ of Certiorari to the United States Court of Appeals for the Ninth Circuit

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REASONS FOR GRANTING THE PETITION

1. The Ninth Circuit held Fourth Amendment facial challenges are proper, but the Sixth Circuit in *Warshak v. United States,* 532 F.3d 521 (6th Cir. 2008) reached the contrary result.

2. Between *Patel* and *Warshak* 25 circuit judges are split as to whether Fourth Amendment facial challenges are proper; 13 judges said they are improper, 12 judges said they are proper.

3. The four dissenters below said the issue of facial Fourth Amendment challenges raise "important constitutional questions." App. 18.

4. In *Sibron v. New York*, 392 U.S. 40, 62, 88 S. Ct. 1889, 20 L. Ed. 2d 917 (1968) this court said Fourth Amendment facial challenges are "the abstract and unproductive exercise of laying the extraordinary elastic categories of the Fourth Amendment." Indeed, "[t]he constitutional validity of a warrantless search is preeminently the sort of question which can only be decided in the concrete factual context of the individual case." *Id.* In *Gonzales v. Carhart*, 550 U.S. 124, 167, 127 S. Ct. 1610, 167 L. Ed. 2d 480 (2007) this court said concrete as-applied challenges are the "basic building blocks of constitutional adjudication."

Respondents, however, assert certiorari should be denied because Fourth Amendment facial challenges are already permitted by this court relying on *Berger v. New York*, 388 U.S. 41, 87 S. Ct. 1873, 18 L. Ed. 2d 1040 (1967) (case brought as a facial Fourth Amendment challenge, but there was no discussion of as-applied versus facial challenges; see *Warshak,* at 530); *Skinner v. Railway Labor Executives Ass'n*, 489

U.S. 602, 109 S. Ct. 1402, 103 L. Ed. 2d 639 (1989) (no discussion of as-applied versus facial challenges); *Clapper v. Amnesty International USA*, __U.S.__, 133 S. Ct. 1138, 185 L. Ed. 2d (2013) (case brought as Fourth Amendment facial challenge, but exclusively discussed standing, no discussion of as-applied versus facial challenges). This court should either prohibit Fourth Amendment facial challenges or delineate a clear rule for when they are allowed, especially in the troublesome warrantless search context from which this case arose. See, *e.g.*, Orin S. Kerr, *The Limits of Fourth Amendment Injunctions,* 7 J. on Telecomm. & High Tech L. 127, 138 (Winter 2009) (approving *Warshak*'s rejection of Fourth Amendment facial challenges, and see *id.*, n. 48.)

5. The reach of *Patel* far exceeds the narrow confines of motel inspection laws; the opinion reaches all statutes implicating the Fourth Amendment. The dissent said such facial Fourth Amendment challenges—as in this case—are improper "advisory opinion[s]," App. 23, and contrary to the majority here, the majority in *Warshak* precluded facial Fourth Amendment challenges because they are not ripe. *Warshak*, at 533-534.

6. In *New York v. Burger,* 482 U.S. 691, 698, 107 S. Ct. 2636, 96 L. Ed. 2d 601 (1987) certiorari was granted "[b]ecause of the important state interest in administrative schemes designed to regulate the vehicle-dismantling or automobile-junkyard industry," citing at note 11, 37 state regulatory statutes. At *Patel*, Appendix E, is a mere representative illustration of 70 laws similar to the City's from across the nation representing two state statutes, and ordinances

ranging from large cities and counties to small towns. There is even a greater state interest here than in *Burger* because the ubiquitous motel inspection regulations reach every nook and cranny of the nation.

7. There is split between this case and *Commonwealth v. Blinn*, 399 Mass. 126, 503 N.E.2d 25 (1987). In *Blinn*, the Massachusetts Supreme Court in an as-applied case upheld the state's motel inspection law which permitted routine warrantless inspections under the Fourth Amendment because the motel operator had no reasonable expectation of privacy in the contents of the motel register. Since the Massachusetts high court rejected this as-applied challenge by definition there can be no facial challenge. In sharp contradiction, even though the critical language between the City's ordinance and the Massachusetts statute are essentially the same, the majority below held a motel has a *facial* right of privacy in the motel's guest register, thus requiring pre-compliance judicial review before police officers can inspect it.

8. Motel guest registration inspection laws are vital deterrents to prostitution and other serious crimes such as murder, torture, attempted murder, cocaine drug sales, assault with a deadly weapon and other serious crimes which occur *at these sampled motels*. App. 120-165. A sampling of these parking meter motels establish since the Ninth Circuit's decision requiring pre-judicial compliance review before there can be an inspection of the guest registers, there has been in the City an average 82% crime increase *at these sampled motels*. App. 120-121. The Ninth Circuit's decision will cause the invalidation of these inspection

laws for the 62 million people living within the circuit, see *Patel v. City of Long Beach*, (Ninth Cir. No. 09-56699, March 19, 2014), App. 116, and it will place in serious jeopardy all similar laws throughout the nation as well as the safety of communities throughout the nation.[1]

I. WHETHER A STATUTE IS SUSCEPTIBLE TO A FACIAL FOURTH AMENDMENT CHALLENGE REQUIRES THE ISSUANCE OF CERTIORARI

1. Respondents' lead argument claims there is not a circuit split between this case and *Warshak* because *Warshak* was a ripeness case, not a facial challenge under the Fourth Amendment. BIO 6-10. Respondents are wrong. To be sure, the majority ultimately concluded in *Warshak* the claims were not ripe, which the City acknowledged at page 1 of the petition. For the *Warshak* majority to reach its ripeness conclusion it first concluded facial Fourth Amendment challenges were improper. See discussion, *Warshak* at 527-532. See also dissent, at 538 (castigating majority for rejecting the concept of Fourth Amendment facial challenges); Orin S. Kerr, *The Limits of Fourth Amendment Injunctions, supra*, (discussing *Warshak*'s rejection of Fourth Amendment facial challenges, and see *id.*, n. 48); Posting of Orin S. Kerr to Volokh Conspiracy, *En Banc Ninth Circuit Invalidates Hotel Inspection Regulation* http://www.volokh.com/2014/01/05/en-banc-ninth-circuit-invalidates-hotel-inspection-

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[1] *Patel v. City of Long Beach* on rehearing reversed its earlier decision rejecting the facial Fourth Amendment challenge. App. 108-114.

regulation/ (Jan. 5, 2014) (discussing the instant case: "Judge Tallman's dissent focused on whether a facial challenge was proper, and I agree with Judge Tallman that it was not.")

Respondents' distort *Warshak's* characterization of *Berger v. New York*, 388 U.S. 41, 87 S. Ct. 1873, 18 L. Ed. 2d 1040 (1967), asserting *Warshak* said *Berger* "'appeared to invalidate a New York eavesdropping statute on its face.'" *Id.* at 531; BIO 9. While this is an accurate quotation, respondents misleading omit the *Warshak* majority's next sentence: "[b]ut the Court did not discuss the distinction between as-applied and facial challenges, and accordingly did not reach, and necessarily did not discuss, the question of whether it made sense to proceed differently." *Id.* Respondents also try to bootstrap their argument by relying on *Payton v. New York*, 445 U.S. 573, 589-590, 598, 100 S. Ct. 1371, 63 L. Ed. 2d 639 & n.46 (1980) and *Torres v. Puerto Rico*, 442 U.S. 465, 471, 474, 99 S. Ct. 2425, 61 L. Ed. 2d 1 (1979) for the proposition *Warshak* acknowledged this court has invalidated statutes in whole or in part under the Fourth Amendment. BIO 9. The court in *Warshak* said these two cases arose in "concrete settings [t]hat is a distant cry from the relief Warshak seeks today." *Id.*

2. *Sibron*, *supra*, at 62, said Fourth Amendment facial challenges are "the abstract and unproductive exercise of laying the extraordinary elastic categories of . the Fourth Amendment." The court further said "[t]he constitutional validity of a warrantless search is preeminently the sort of question which can only be decided in the concrete factual context of the individual case." *Id.* In *Gonzales v. Carhart*, *supra*, 550 U.S. 124,

167, 127 S. Ct. 1610, 167 L. Ed. 2d 480 this court said as-applied challenges are the "basic building blocks of constitutional adjudication."

Respondents, however, claim a prohibition of Fourth Amendment facial challenges is inconsistent with this court's precedents. Respondents' argument demonstrates the need for the issuance of certiorari. Respondents rely on *Berger*, *supra; Skinner*, *supra*; and *Clapper*, *supra*, for the proposition that facial Fourth Amendment challenges are proper. BIO 13. This court in *Sibron* distinguished *Berger* on the ground that *Berger* dealt with the "adequacy of procedural safeguards written into the statute," *id.* at 59, and in *Warshak*, at 531, the court said *Berger* did not discuss the "distinction between as-applied and facial challenges, and necessarily did not reach, and necessarily did not discuss, the question whether it would have made sense to proceed differently." *Skinner*, at 614, was brought as a Fourth Amendment facial challenge and decided on the merits as a facial challenge, but consistent with *Warshak's* discussion of *Berger* there was no discussion of as-applied versus facial challenges. In *Clapper*, at 1146, aside from this court's passing reference to the Fourth Amendment, the entirety of the opinion addressed the standing question; there was no discussion of as-applied versus facial challenges. This court should either prohibit Fourth Amendment facial challenges or delineate a clear rule for when they are allowed, especially in the troublesome warrantless search context from which

this case arose.[2] See, *e.g.*, Orin S. Kerr, *The Limits of Fourth Amendment Injunctions, supra.*

3. Respondent frivolously asserts the City waived the facial Fourth Amendment issue because it was not raised or decided below. BIO 14. On June 17, 2013, the court below ordered the parties to discuss *Sibron* at oral argument, which was done. The majority and dissent debated whether facial Forth Amendment challenges are permitted. The issue was raised and decided. Respondents' reliance on *Mastrobuono v. Shearson Lehman Hutton, Inc.*, 514 U.S. 52, 64, n.1, 115 S. Ct. 1212, 131 L. Ed. 2d 7 (1995) is transparently inapplicable because the waived issue was not raised by the certiorari petition or the opening brief.

II. WHETHER MOTEL GUEST REGISTRATION INSPECTION LAWS ARE FACIALLY UNCONSTITUTIONAL UNDER THE FOURTH AMENDMENT ABSENT PRE-COMPLIANCE JUDICIAL REVIEW NECESSITATES THE ISSUANCE OF CERTIORARI

1. There is a spit of authority between this case and *Blinn* as to whether there is a *facial* expectation of

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[2] Respondents improperly rely on *New York v. Burger*, 482 U.S. 691, 107 S. Ct. 2636, 96 L. Ed 2d 601 (1987) (motion to suppress); *Marshall v. Barlow's, Inc.*, 436 U.S. 307, 98 S. Ct. 1816, 56 L. Ed. 2d 305 (1978) (motion to suppress); *Donovan v. Lone Steer, Inc.*, 464 U.S. 408, 104 S. Ct. 769, 78 L. Ed. 2d 567 (1984) (upheld inspection of motel and restaurant pursuant to administrative subpoena); *See v. City of Seattle*, 387 U.S. 541, 87 S. Ct. 1737, 18 L. Ed. 2d 943 (1967) (motion to suppress). BIO 11-12. All of these cases arose in the inapplicable as-applied context. See Tallman, J., dissent, App. 23-24, n. 2.

privacy by motel operators in their guest registers. The City acknowledged at page 1 of the petition that *Blinn* was an as-applied case, but if a statute can survive an as-applied challenge by definition it will survive a facial challenge. *Wash. State Grange v. Wash. State Republican Party*, 552 U.S. 442, 449, 128 S. Ct. 1184, 170 L. Ed. 2d 697 (2008) (a facial challenge can succeed only if no set of circumstances exist under which the act would be valid).

Since respondents cannot distinguish the City's ordinance from the Massachusetts' state statute, they changed the subject from a facial analysis to an as-applied discussion.[3] Respondents' also assert since the dissent did not "quibble" that hotel registries are "papers" under *Jones v. United States*, __ U.S. __, 132 S. Ct. 945, 181 L. Ed. 2d 911 (2012), there is no issue for this court to review and the City is asking for an "advisory opinion regarding reasonable expectations of privacy." BIO 16. The argument is nonsense. Judge Clifton's dissent acknowledged hotel registers are "papers," but he said that was just the start of the analysis. App. 26, citing *Jones*, at 949-51 and *Maryland*

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[3] Respondents by equal misdirection assert the norms of privacy shift over time and as such there is no comparison between the tiny town of Danvers whose population in 1987 was 24,000 and the City 2006. BIO 17. Again, this case presents a facial interpretation of the Fourth Amendment, not an as-applied analysis, and besides a Danvers' ordinance was not at issue, it was a Massachusetts state statute and for what it's worth at that time *Blinn* was decided Massachusetts' population was about six million, which is approaching twice the size of the City's current population. Compare: https://www.census.gov/dmd/www/resapport/states/massachusetts.pdf; http://factfinder2.census.gov/faces/tableservices/jsf/pages/productview.xhtml?src=bkmk

v. King, __U.S.__ , 133 S. Ct. 1958, 1969, 186 L. Ed. 2d 1 (2013).

2. Respondents claim they have a subjective expectation of privacy in the registries. BIO 18-19. While this may or may not be true, although there is no evidence of it in the record, and the real question here is whether hotels generally treat the information in registries as private. The dissent correctly stated the majority never addressed these issues, but nevertheless imposed an "absolute requirement" for pre-compliance judicial review. App. 27, 30.

One thing is clear, Alameda County, California, with a population of about 1.5 million[4], mandates that its registries "at all times" must be open for public inspection for at least five years and in Arcadia, California all registries must be kept open for inspection by any establishment guest, city executive or police officer. App. 68-69. For there to be an "absolute requirement" rule of privacy for these registries as the majority decided is fundamentally wrong. See dissent by Clifton, App. 29.

3. Respondents denigrate the City's argument as being "overwrought" that a broad number of motel registration inspection laws will be invalided by the Ninth Circuit's decision. BIO 19. Even before this petition was filed, the invalidation began. See *Patel v. City of Long Beach, supra*, App. 116, and the invalidation of Long Beach's ordinance happened *because* of this case and upon rehearing by the Ninth Circuit *after* the court originally rejected the facial

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[4] http://quickfacts.census.gov/qfd/states/06/06001.html

Fourth Amendment challenge to Long Beach's ordinance. App. 108-114. Not only are all of the ubiquitous motel inspection ordinances throughout the Ninth Circuit, which spans nine states and two territories with a population of almost 62 million people,[5] likely to be struck down for facially violating the Fourth Amendment, similar laws throughout the nation absent this court's intervention are in serious jeopardy.

4. Respondents lastly argue by empty rhetoric since the Ninth Circuit's decision does not disturb the record keeping requirement, the deterrent effect of the ordinance remains in effect, there is no evidence the "books are being cooked" and requiring a warrant "is not a bad result." BIO 20. Respondents are either hopelessly naïve or darkly misleading this court.

Respondents' argument falsely and cynically assumes the operators of these parking meter motels are honest people who follow the rules so the immutable records always will be available for inspection. Los Angeles Police Department Det. Eric Moore, a nuisance abatement expert and the officer-in-charge of enforcing § 41.49, testified without contradiction that officers observe "guests" check-in at these parking meter motels, but upon inspection of the records the observed "guests" commonly do not completely fill out the registration cards or they were never filled it out at all. Supplemental Record Excerpts [SRE] 98. Unless the officers can immediately detect this type of criminal activity without pre-compliance judicial review the officers would be unable to cite the

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[5] http://www.census.gov/2010census/data

offenders, especially when there is no card whatsoever. SRE 98. Observed prostitutes and other criminals who constantly use these motels to further their criminal activities avoid completing registration cards.[6] SRE 99. They want to anonymously engage in their criminal activities, SRE 98, because they do not want to leave a paper trail for police investigators and they do so with the eager assistance of these motel operators.

Detective Moore testified enforcement of § 41.49 deters not only prostitution, but also other serious criminal activity. SRE 99. These motels are crime magnets. In the six months prior to the ordinance's suspension on February 10, 2014, a sampling of five motels reveal there were 55 crime and arrest reports. App. 120-172. In the six months after the ordinance's suspension which barred registry searches unless they judicially authorized, there were 100 crime and arrest reports at *these same motels, an 82% increase in criminal activity on the motel premises*. App. 120-172. These crimes, many of which occurred inside motel rooms included murder, attempted murder involving horrific torture, conspiracy to sell cocaine among many other serious crimes. App. 173-241. There is no doubt the City's loss of surprise guest register inspections has had an immediate and dangerous impact on the decent people who live and work around these motels and these communities as a whole. These data manifest the critical importance and effectiveness of these guest register inspection laws which are a powerful deterrent to prostitution and other very serious criminal activity. This powerful deterrence goes far to explain why these

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[6] Many prostitutes are also too young to possess the requisite identification, such as a driver's license. App. 245.

laws are ubiquitous throughout the nation, which are now demonstrably in jeopardy and the societal protection they bring because of the Ninth Circuit's decision.

If the ability to conduct prompt searches without pre-compliance judicial review is eliminated—as was done by the Ninth Circuit—these motel operators will be and are—energized on steroids to blatantly ignore these registration laws and police officers in most instances cannot cite these offenders because the Ninth Circuit caused the City's ordinance to be suspended. App. 120-121. The consequence is to severely damage the deterrent effect of motel guest inspection laws, SRE 99, which has demonstrably led and will lead to even greater increases in serious crime. App. 120-245. This is indeed a "bad result"; certiorari should be granted to establish a definitive rule for Fourth Amendment facial challenges and there is not facial right to privacy by motel operators in guest registers.

CONCLUSION

Predicated on the foregoing, the City of Los Angeles requests that certiorari be granted.

Respectfully submitted,

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James P. Clark
Chief Deputy City Attorney
Thomas H. Peters
Chief Assistant City Attorney
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APPENDIX

APPENDIX

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APPENDIX F

NOT FOR PUBLICATION

UNITED STATES COURT OF APPEALS
FOR THE NINTH CIRCUIT

No. 09-56699
D.C. No. 2:08-cv-02806-ABC-VBK

[Filed July 17, 2012]

JAYANTIBHAI PATEL, Individual and all others similarly situated and Plaintiff Tenants, DBA Princess Inn; et al.,
Plaintiffs - Appellants,

v.

CITY OF LONG BEACH, a municipal corporation,
Defendant - Appellee.

MEMORANDUM*

Appeal from the United States District Court
for the Central District of California
Audrey B. Collins, Chief District Judge, Presiding

* This disposition is not appropriate for publication and is not precedent except as provided by 9th Cir. R. 36-3.

Argued and Submitted December 6, 2010
Pasadena, California

Before: PREGERSON, CLIFTON, and BEA, Circuit Judges.

The Patels appeal from the district court's dismissal of their suit under 42 U.S.C. § 1983 alleging violation of due process and the First and Fourth Amendments. The Patels' claims arise from actions taken by Long Beach towards them in their roles as owners and operators of the Princess Inn, a motel in Long Beach, California. We affirm.

I. Due Process

Plaintiffs Pravin and Dipak Patel claimed that Long Beach deprived them of substantive due process by failing to give them notice of the administrative hearing regarding the revocation of the license to operate the Princess Inn. Pravin and Dipak, as owners of the Inn, did not have a property interest in Jayantibhai Patel's license to operate the Inn and therefore did not have a right to procedural due process. *See Board of Regents of State Colleges v. Roth*, 408 U.S. 564, 569-570 (1972) ("The requirements of procedural due process apply only to deprivation of interests encompassed by the Fourteenth Amendment's protection of liberty and property."). As the district court noted, Dipak and Pravin may have a "curious interest" in the outcome of the license revocation hearing, but they have no ownership of the license nor a "legitimate claim of entitlement to it." *Id.* at 577. The district court properly found there was no violation of the due process clause.

II. First Amendment

The Patels' First Amendment claim also relates to Long Beach's commencement of procedures to revoke the license to operate the Princess Inn. The complaint alleged a violation of their right to access the courts, but gave no further specifics as to how this right was violated. Plaintiffs' response to Long Beach's motion for summary judgment raised for the first time a theory of retaliation. As the district court held, a plaintiff cannot raise a new theory for the first time in opposition to summary judgment. *See Coleman v. Quaker Oats Co.*, 232 F.3d 1271, 1292-93 (9th Cir. 2000) (plaintiff could not proceed with new theory not pled in complaint); *Wasco Products, Inc. v. Southwall Tech., Inc.* 435 F.3d 989 (9th Cir. 2006). Allowing a plaintiff to proceed on a new theory would prejudice defendants because "[a] complaint guides the parties' discovery putting the defendant on notice of the evidence it needs to adduce in order to defend against the plaintiff's allegations." *Coleman*, 232 F.3d at 1292. The statement in the complaint that there was a denial of access to the courts, without explanation, provided no notice of a retaliation theory. The district court properly held that the Patels could not raise this new theory during summary judgment.

Moreover, even if the district court had considered this argument, it was without merit. Plaintiffs claimed retaliation due to their refusal to enter into a settlement agreement with the City regarding unpaid taxes. Plaintiffs relied on *Sorrano Gasco, Inc. v. Morgan*, 874 F.2d 1310, 1313-14 (9th Cir. 1989), in which the court recognized a claim under § 1983 where a business alleged that the government suspended its

permits in retaliation for criticizing and bringing suit challenging a government program. Plaintiffs' reliance on *Sorrano* is misplaced because the *Sorrano* Court was explicit that a retaliation claim will only lie if "plaintiffs can establish that the decision to suspend the permits was made because of [plaintiffs'] exercise of constitutionally protected rights." *Id.* at 1314. Plaintiffs' rejection of a settlement agreement was not an exercise of a constitutionally protected right.

III. Fourth Amendment

The Patels raise a facial and as-applied challenge under the Fourth Amendment to Long Beach Municipal Code ("LBMC") § 5.48.010, which requires motel operators to maintain a guest registry and make it available to the police for inspection on demand. They argued that the regulation is facially unconstitutional because it allows for warrantless searches and that the specific inspection of the Princess Inn's guest registry was unconstitutional.

We considered a facial challenge to a similar municipal regulation in *Patel v. Los Angeles*, No. 08-56567, __ F.3d. __ (9th Cir. _____, 2012) Our conclusion in that case that the facial challenge failed is controlling here. Like the Patels in that case, the Patels here are unable to show that all motel owners affected by the regulation have a subjective and objectively reasonable expectation of privacy in their guest registries. *See Minnesota v. Carter*, 525 U.S. 83, 88 (1998) ("in order to claim the protection of the Fourth Amendment, a [person] must demonstrate that he personally has an expectation of privacy in the place searched, and that his expectation is reasonable"). Nor have they demonstrated that the intrusion into the

papers authorized under the ordinance is unreasonable in some other way, as to themselves or to motel operators in general. Therefore the Patels cannot "establish that no set of circumstances exist under which the Act would be valid." *United States v. Salerno*, 481 U.S. 739, 745 (1987).

The Patels also raise an as-applied challenge specific to the search and seizure of the guest registry of the Princess Inn. As we noted in *Patel v. Los Angeles*, it might be possible for a motel owner to establish that he has a reasonable expectation of privacy in his guest registry based on the manner in which he uses, maintains, and stores the registry. *See Patel v. Los Angeles*, slip op. at __ ; *see also Sibron v. New York*, 392 U.S. 40, 59 (1968) ("The constitutional validity of a warrantless search is pre-eminently the sort of question which can only be decided in the concrete factual context of the individual case.").

However, here the Patels have presented no evidence that demonstrates that they have even a subjective expectation of privacy in the Princess Inn guest registry, let alone an objectively reasonable expectation. There was no evidence presented that the guest registry is used in a manner that would make it important to keep the information in the guest registry private. Nor was there any evidence that the Patels maintain or store the guest registry in a secure or private manner, such that inspection of the registry would constitute an intrusion that was unreasonable in any other way. The Patels failed to meet their burden. *See United States v. Silva*, 247 F.3d 1051, 1055 (9th Cir. 2001) ("[Appellants] have the burden of establishing that, under the totality of the

circumstances, the search or seizure violated their legitimate expectation of privacy.").

AFFIRMED.

Patel v. City of Long Beach, No. 09-56699
Pregerson, Circuit Judge, dissenting:

I respectfully dissent. In my view, Long Beach Municipal Code Section 5.48.010 violates the Fourth Amendment on its face. *See Patel v. City of Los Angeles*, No. 08-56567, — F.3d — (9th Cir. 2011) (Pregerson, J., dissenting).

APPENDIX G

NOT FOR PUBLICATION

UNITED STATES COURT OF APPEALS
FOR THE NINTH CIRCUIT

No. 09-56699
D.C. No. 2:08-cv-02806-ABC-VBK

[Filed March 19, 2014]

JAYANTIBHAI PATEL, Individual and all others similarly situated and Plaintiff Tenants, DBA Princess Inn; et al.,	)
Plaintiffs - Appellants,	)
v.	)
CITY OF LONG BEACH, a municipal corporation,	)
Defendant - Appellee.	)

ORDER

Before: PREGERSON, CLIFTON, and BEA, Circuit Judges.

The petition for rehearing filed by Plaintiffs-Appellants on August 22, 2012 is granted. The

memorandum disposition filed July 17, 2012 is withdrawn and replaced by the memorandum disposition filed with this order.

APPENDIX H

NOT FOR PUBLICATION

UNITED STATES COURT OF APPEALS
FOR THE NINTH CIRCUIT

No. 09-56699
D.C. No. 2:08-cv-02806-ABC-VBK

[Filed March 19, 2014]

JAYANTIBHAI PATEL, Individual and all others similarly situated and Plaintiff Tenants, DBA Princess Inn; et al.,
Plaintiffs - Appellants,

v.

CITY OF LONG BEACH, a municipal corporation,
Defendant - Appellee.

MEMORANDUM*

Appeal from the United States District Court
for the Central District of California
Audrey B. Collins, Chief District Judge, Presiding

* This disposition is not appropriate for publication and is not precedent except as provided by 9th Cir. R. 36-3.

Argued and Submitted December 6, 2010
Pasadena, California

Before: PREGERSON, CLIFTON, and BEA, Circuit Judges.

The Patels appeal from the district court's dismissal of their suit under 42 U.S.C. § 1983 alleging violation of due process and the First and Fourth Amendments. The Patels' claims arise from actions taken by Long Beach towards them in their roles as owners and operators of the Princess Inn, a motel in Long Beach, California. We affirm in part and reverse and remand in part.

I. Due Process

Plaintiffs Pravin and Dipak Patel claimed that Long Beach deprived them of substantive due process by failing to give them notice of the administrative hearing regarding the revocation of the license to operate the Princess Inn. Pravin and Dipak, as owners of the Inn, did not have a property interest in Jayantibhai Patel's license to operate the Inn and therefore did not have a right to procedural due process. *See Board of Regents of State Colleges v. Roth*, 408 U.S. 564, 569-570 (1972) ("The requirements of procedural due process apply only to deprivation of interests encompassed by the Fourteenth Amendment's protection of liberty and property."). As the district court noted, Dipak and Pravin may have a "curious interest" in the outcome of the license revocation hearing, but they have no ownership of the license nor a "legitimate claim of entitlement to it." *Id.* at 577. The district court properly found there was no violation of the due process clause.

II. First Amendment

The Patels' First Amendment claim also relates to Long Beach's commencement of procedures to revoke the license to operate the Princess Inn. The complaint alleged a violation of their right to access the courts, but gave no further specifics as to how this right was violated. Plaintiffs' response to Long Beach's motion for summary judgment raised for the first time a theory of retaliation. As the district court held, a plaintiff cannot raise a new theory for the first time in opposition to summary judgment. *See Coleman v. Quaker Oats Co.*, 232 F.3d 1271, 1292-93 (9th Cir. 2000) (plaintiff could not proceed with new theory not pled in complaint); *Wasco Products, Inc. v. Southwall Tech., Inc.* 435 F.3d 989 (9th Cir. 2006). Allowing a plaintiff to proceed on a new theory would prejudice defendants because "[a] complaint guides the parties' discovery putting the defendant on notice of the evidence it needs to adduce in order to defend against the plaintiff's allegations." *Coleman*, 232 F.3d at 1292. The statement in the complaint that there was a denial of access to the courts, without explanation, provided no notice of a retaliation theory. The district court properly held that the Patels could not raise this new theory during summary judgment.

Moreover, even if the district court had considered this argument, it was without merit. Plaintiffs claimed retaliation due to their refusal to enter into a settlement agreement with the City regarding unpaid taxes. Plaintiffs relied on *Sorrano Gasco, Inc. v. Morgan*, 874 F.2d 1310, 1313-14 (9th Cir. 1989), in which the court recognized a claim under § 1983 where a business alleged that the government suspended its

permits in retaliation for criticizing and bringing suit challenging a government program. Plaintiffs' reliance on *Sorrano* is misplaced because the *Sorrano* Court was explicit that a retaliation claim will only lie if "plaintiffs can establish that the decision to suspend the permits was made because of [plaintiffs'] exercise of constitutionally protected rights." *Id.* at 1314. Plaintiffs' rejection of a settlement agreement was not an exercise of a constitutionally protected right.

III. Fourth Amendment

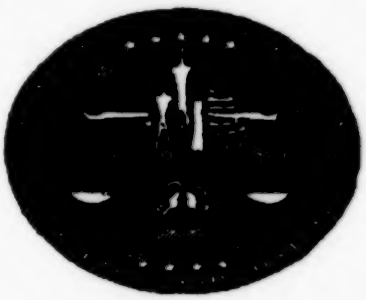
The Patels raise a facial and as-applied challenge under the Fourth Amendment to Long Beach Municipal Code ("LBMC") § 5.48.010, which requires motel operators to maintain a guest registry and make it available to the police for inspection on demand. They argued that the regulation is facially unconstitutional because it allows for warrantless searches and that the specific inspection of the Princess Inn's guest registry was unconstitutional. As to this claim, we reverse and remand. *Patel v. City of Los Angeles*, No. 08-56567, 2013 WL 6768090 (9th Cir. December 24, 2013). The district court should determine the effect of this reversal on the supplemental state claims that were previously dismissed without prejudice.

Each party shall bear its own costs.

AFFIRMED in part; REVERSED in part; REMANDED.

APPENDIX I

Los Angeles Police Department



NUISANCE MOTEL ARREST ACTIVITIES WITH AND WITHOUT LAMC §41.49

MOTELS	NO. OF CRIME AND ARREST REPORTS		CHANGE
	WITH LAMC §41.49	WITHOUT LAMC §41.49	
	8/10/13 2/10/14	2/10/14 8/10/14	
PALMS MOTEL 8480 Figueroa Ave, Los Angeles, CA 90003	3	6	+100%

continued to next page, App. 121

continued from previous page, App. 120

PINK CLOUD MOTEL 9355 Sepulveda Blvd, North Hills, CA 91343	5	9	+80%
PANORAMA MOTEL 8209 Sepulveda Blvd, Panorama City, CA 91402	10	31	+210%
MOTEL 6 6909 Sepulveda Blvd, Panorama City, CA 91402	24	27	+13%
BRONCO MOTEL 5501 Western Ave, Los Angeles, CA 90062	13	27	+108%
TOTAL	55	100	+82%

By order of the Chief of Police, §41.49's enforcement was "suspended" on February 10, 2014, which means pre-compliance judicial review is required to inspect motel guest registries absent consent from the motel.

PALMS MOTEL PRIOR TO §41.49 SUSPENSION — 3 CRIME/ARR

DCTS Search For: Location
Conducted by: MOORE, ERIC

Event Address Search — *08/19/2014*
Street Number From: 8480 *Street Number To: 8480* *Page 1*
Street Name: FIGUEROA
Event Date From: 08/10/2013 Event Date To: 02/10/2014

Party Name	*Confid*	*Address*	*Report ID*	*Role*	*Bkd Under*	*Assigned*	*Crime Description*	*Crme/Arst Date*
WARD, MYISHA		8480 FIGUEROA	131221178	V		1309:12A 03-032	THEFT FROM MOTOR VEHICLE	09/15/2013
RAMIREZ, MARIO		8480 FIGUEROA	131225054	W		1311:12 M03-013	ASSAULT WITH DEADLY WEAP	11/14/2013
LEVI, STEPHANIE		8480 FIGUEROA	131225054	V		1311:12 M03-013	ASSAULT WITH DEADLY WEAP	11/14/2013

PALMS MOTEL PRIOR TO §41.49 SUSPENSION — 3 CRIME/ARR

WESTBROOK, KEITH	8480 FIGUEROA	131225054	S		1311:12 M03-013	ASSAULT WITH DEADLY WEAP	11/14/2013
TODD, TANYA	8480 FIGUEROA	131225054	W		1311:12 M03-013	ASSAULT WITH DEADLY WEAP	11/14/2013
VELAZQUEZ, MARIA	8480 FIGUEROA	131226330	A	131226330	12	BOOKING CHARGE : 316PC	11/26/2013

PALMS MOTEL AFTER §41.49 SUSPENSION 6 CRIME/ARR

DCTS Search For: Location	*Event Address Search* *08/19/2014*
Conducted by: MOORE, ERIC	*Street Number From: 8480* *Street Number To: 8480* *Page 1*
	Street Name: FIGUEROA
	Event Date From: 02/10/2014 *Event Date To: 08/10/2014*

Party Name	*Confid*	*Address*	*Report ID*	*Role*	*Bkd Under*	*Assigned*	*Crime Description*	*Crme/Arst Date*
SUSPECT, TWO		8480 FIGUEROA	141211143	S		18P	THEFT-GRAND ($950.01 & O	04/26/2014
TOM, ALLAN ORLADNO		8480 FIGUEROA	141211143	V		18P	THEFT-GRAND ($950.01 & O	04/26/2014
SUSPECT, ONE		8480 FIGUEROA	141211143	S		18P	THEFT-GRAND ($950.01 & O	04/26/2014
LOCKRIDGE, TATEANA		8480 FIGUEROA	141215066	V		1406:12 M07-035	SPOUSAL (COHAB) ABUSE - S	06/24/2014

App. 124

PALMS MOTEL AFTER §41.49 SUSPENSION — 6 CRIME/ARR

TAYLOR, LAZARRIUS	8480 FIGUEROA	141215066 A	4013227	1406:12 M07-035	SPOUSAL (COHAB) ABUSE - S	06/24/2014
BARRIENTOS, EDDIE	8480 FIGUEROA	141215066 W		1406:12 M07-035	SPOUSAL (COHAB) ABUSE - S	06/24/2014
GUTTIERREZ, FRANCISCO	8480 FIGUEROA	141215357 V		1406:12 B04-155	THEFT PLAIN - PETTY ($95	06/29/2014
SUSPECT, ONE	8480 FIGUEROA	141215357 S		1406:12 B04-155	THEFT PLAIN - PETTY ($95	06/29/2014
CESAR, BRENDA	8480 FIGUEROA	141217539 V		18M	BATTERY - SIMPLE ASSAULT	07/30/2014
EVERLY, DUANE	8480 FIGUEROA	141217539 S		18M	BATTERY - SIMPLE ASSAULT	07/30/2014

PALMS MOTEL AFTER §41.49 SUSPENSION — 6 CRIME/ARR

MENDEZ, FRANK	8480 FIGUEROA	3961258	A	3961258	CT	BOOKING CHARGE : 653.22(	05/05/2014
GIDDENS, LASHANDA MERCEDES	8480 FIGUEROA	4045505	A	4045505	CT	BOOKING CHARGE: 647(B)P	07/28/2014

PINK CLOUD MOTEL PRIOR TO §41.49 SUSPENSION — 5 CRIME/ARR

DCTS Search For: Location	*Event Address Search* *08/20/2014*
Conducted by: BERUMEN, ROBERT	*Street Number From: 9355* *Street Number To: 9355* *Page 1*
	Street Name: SEPULVEDA
	Event Date From: 08/10/2013 *Event Date To: 02/10/2014*

Party Name	*Confid*	*Address*	*Report ID*	*Role*	*Bkd Under*	*Assigned*	*Crime Description*	*Crme/Arst Date*
EVIDENCE, MSN		9355 SEPULVEDA	131917984	V		CT	PROPERTY - EVIDENCE/ NON-	08/22/2013
SPENCER, ROCHELLE		9355 SEPULVEDA	131917984	A	3667010	CT	PROPERTY - EVIDENCE/ NON-	08/22/2013
SPENCER, ROCHELLE		9355 SEPULVEDA	3667010	A	3667010	CT	BOOKING CHARGE: 647(B)P	08/22/2013
CASTILLO, JOSE MAURICIO		9355 SEPULVEDA	3713910	A	3713910	CT	BOOKING CHARGE: 23152(B	09/16/2013

PINK CLOUD MOTEL PRIOR TO §41.49 SUSPENSION 5 CRIME/ARR

MONTANEZ, MONICA	9355 SEPULVEDA	3716559	A	3716559	CT	BOOKING CHARGE: 11350(A	09/18/2013
GARCIA, MARICELA	9355 SEPULVEDA	3717524	A	3717524	CT	BOOKING CHARGE: 11352(A	09/19/2013
VASQUEZ, SILVIANO	9355 SEPULVEDA	3758673	A	3758673	CT	BOOKING CHARGE: 12500(A	10/30/2013

PINK CLOUD MOTEL AFTER §41.49 SUSPENSION 9 CRIME/ARR

DCTS Search For: Location *Conducted by: BERUMEN, ROBERT*	*Event Address Search* *08/20/2014* *Street Number From: 9355* *Street Number To: 9355* *Page 1* *Street Name: SEPULVEDA* *Event Date From: 02/10/2014* *Event Date To: 08/10/2014*

Party Name	*Confid*	*Address*	*Report ID*	*Role*	*Bkd Under*	*Assigned*	*Crime Description*	*Crme/Arst Date*
LOPE, MIGUEL ALFONSO		9355 SEPULVEDA	141908505	A	3901188	19	PROPERTY - EVIDENCE/ NON-	03/20/2014
RIOS, ALYSSA MARIE		9355 SEPULVEDA	141908505	A	3901201	19	PROPERTY - EVIDENCE/ NON-	03/20/2014
RAMIREZ, CYNTHIA		9355 SEPULVEDA	141908505	A	3901204	19	PROPERTY - EVIDENCE/ NON-	03/20/2014
EVIDENCE, MISSION NARCO		9355 SEPULVEDA	141908505	V		19	PROPERTY - EVIDENCE/ NON-	03/20/2014

PINK CLOUD MOTEL AFTER §41.49 SUSPENSION — 9 CRIME/ARR

EVIDENCE, MISSION NARCO	9355 SEPULVEDA	141908506 V		19	PROPERTY - EVIDENCE/ NON-	03/20/2014
SALAZAR, AURA VIOLETA	9355 SEPULVEDA	141914182 V		1406:19 M05-029	SPOUSAL (COHAB) ABUSE - S	06/24/2014
CABRERA, DAVID	9355 SEPULVEDA	141914182 A	4013176	1406:19 M05-029	SPOUSAL (COHAB) ABUSE - S	06/24/2014
MENANNO, CHERI	9355 SEPULVEDA	141914944 V		1407:19 M05-07	SPOUSAL (COHAB) ABUSE - S	07/05/2014
CALDERON, ADAM	9355 SEPULVEDA	141914944 S		1407:19 M05-007	SPOUSAL (COHAB) ABUSE - S	07/05/2014
EVIDENCE, MISN	9355 SEPULVEDA	141916050 V		87	PROPERTY - EVIDENCE/ NON-	07/25/2014

PINK CLOUD MOTEL AFTER §41.49 SUSPENSION 9 CRIME/ARR

LOPEZACEVEDO, PABLO ADALBERTO	9355 SEPULVEDA	141916050	A	4042623	87	PROPERTY - EVIDENCE/ NON-	07/25/2014
LOPE, MIGUEL ALFONSO	9355 SEPULVEDA	3901188	A	3901188	87	BOOKING CHARGE: 11550HS	03/20/2014
ARIAZ, RAUL SEPULVEDA	9355 SEPULVEDA	3901190	A	3901190	CT	BOOKING CHARGE: 1203.2P	03/20/2014
RIOS, ALYSSA	9355 SEPULVEDA	3901201	A	3901201	87	BOOKING CHARGE: 11550HS	03/20/2014
RAMIREZ, CYNTHIA	9355 SEPULVEDA	3901204	A	3901204	87	BOOKING CHARGE: 11550(A	03/20/2014
PINEDA, MIGUEL ANGEL	9355 SEPULVEDA	3916836	A	3916836	CT	BOOKING CHARGE: 11377(A	04/05/2014

PINK CLOUD MOTEL AFTER §41.49 SUSPENSION — 9 CRIME/ARR

LOPEZACEVEDO, PABLO ADALBERTO	9355 SEPULVEDA	4042623	A	4042623	87	BOOKING CHARGE : 11379HS	07/25/2014
HODEK, LINDA	9355 SEPULVEDA	4046214	A	4046214	CT	BOOKING CHARGE : 459PC	07/29/2014

PANORAMA MOTEL PRIOR TO §41.49 SUSPENSION 10 CRIME/ARR

DCTS Search For: Location	*Event Address Search* *08/20/2014*
Conducted by: BERUMEN, ROBERT	*Street Number From: 8209* *Street Number To: 8209* *Page 1*
	Street Name: SEPULVEDA
	Event Date From: 08/10/2013 *Event Date To: 02/10/2014*

Party Name	*Confid*	*Address*	*Report ID*	*Role*	*Bkd Under*	*Assigned*	*Crime Description*	*Crme/Arst Date*
EVIDENCE, MISN NARCO		8209 SEPULVEDA	131901590	V		87	PROPERTY - EVIDENCE/ NON-	12/12/2013
QUITAZOL, BASILIO AMOR		8209 SEPULVEDA	131901590	A	3800649	87	PROPERTY - EVIDENCE/ NON-	12/12/2013
EVIDENCE, MISN		8209 SEPULVEDA	131921641	V		1402:19 R02-005	PROPERTY - EVIDENCE/ NON-	10/23/2013
PANCHAL, KANAN		8209 SEPULVEDA	131921641	F		1402:19 R02-005	PROPERTY - EVIDENCE/ NON-	10/23/2013

PANORAMA MOTEL PRIOR TO §41.49 SUSPENSION 10 CRIME/ARR

EVIDENCE, MISN	8209 SEPULVEDA	131922571 V		87	PROPERTY - EVIDENCE/ NON-	11/06/2013
OSIPYAN, LILIANA	8209 SEPULVEDA	131922571 A	3766022	87	PROPERTY - EVIDENCE/ NON-	11/06/2013
MCNEELY, ANTHONY	8209 SEPULVEDA	131923111 W		1310:07J 51-012	S.C.A.R. (SUSPECTE D CHILD	10/26/2013
ATKINS, RAMONA	8209 SEPULVEDA	131923111 P		1310:07J 51-012	S.C.A.R. (SUSPECTE D CHILD	10/26/2013
ATKINS JOZLYN	8209 SEPULVEDA	131923111 V		1310:07J 51-012	S.C.A.R. (SUSPECTE D CHILD	10/26/2013
EVIDENCE, MISN	8209 SEPULVEDA	141905249 V		87	PROPERTY - EVIDENCE/ NON-	01/24/2014

PANORAMA MOTEL PRIOR TO §41.49 SUSPENSION 10 CRIME/ARR

BROWN, SIMON PATRICK	8209 SEPULVEDA	141905249	A	3844249	87	PROPERTY - EVIDENCE/ NON-	01/24/2014
RUSSELL, DEBORAH	8209 SEPULVEDA	3709136	A	3709136	19	BOOKING CHARGE : 1551.1P	09/12/2013
MCCALL, DEBORAH SUE	8209 SEPULVEDA	3709136	A	3709136	19	BOOKING CHARGE : 1551.1P	09/12/2013
WADE, ALSHANEIA	8209 SEPULVEDA	3724010	A	3724010	CT	BOOKING CHARGE : 653.22(	09/26/2013
ANDINO, SHATANYA DEANA	8209 SEPULVEDA	3754685	A	3754685	CT	BOOKING CHARGE : 12500(A	10/26/2013
WILBERT, LATASHA	8209 SEPULVEDA	3754697	A	3754697	CT	BOOKING CHARGE : 484(A)P	10/26/2013

PANORAMA MOTEL PRIOR TO §41.49 SUSPENSION 10 CRIME/ARR

JAUREGUI, LEOPOLD	8209 SEPULVEDA	3765980	A	3765980	CT	BOOKING CHARGE : 11377(A	11/06/2013
OSIPYAN, LILIANA	8209 SEPULVEDA	3766022	A	3766022	87	BOOKING CHARGE : 11377(A	11/06/2013
QUITAZOL, BASILIO AMOR	8209 SEPULVEDA	3800649	A	3800649	87	BOOKING CHARGE : 11377(A	12/12/2013
NOWAK, AMBER BREANNE	8209 SEPULVEDA	3800670	A	3800670	CT	BOOKING CHARGE : 496(A)P	12/12/2013
BROWN, SIMON PATRICK	8209 SEPULVEDA	3844249	A	3844249	87	BOOKING CHARGE : 11377(A	01/24/2014

DCTS Search For: Location
Conducted by: BERUMEN, ROBERT

Event Address Search *08/20/2014*
Street Number From: 8209 *Street Number To: 8209* *Pages 1-3*
Street Name: SEPULVEDA
Event Date From: 02/10/2014 *Event Date To: 08/19/2014*

Party Name	*Confid*	*Address*	*Report ID*	*Role*	*Bkd Under*	*Assigned*	*Crime Description*	*Crme/Arst Date*
PATINO, CARLOS		8209 SEPULVEDA	141901013	V		1408:19G 03-007	ASSAULT WITH DEADLY WEAP	08/16/2014
RAMIREZ, MANUEL		8209 SEPULVEDA	141901013	A	4067263	1408:19G 03-007	ASSAULT WITH DEADLY WEAP	08/16/2014
MUNOZ, ALEJANDRA		8209 SEPULVEDA	141901013	W		1408:19 G03-007	ASSAULT WITH DEADLY WEAP	08/16/2014

PANORAMA MOTEL AFTER §41.49 SUSPENSION 31 CRIME/ARR

DELVALLE, MARCO	8209 SEPULVEDA	141901013 W	1408:19 G03-007	ASSAULT WITH DEADLY WEAP	08/16/2014
OSUNA, DAVID	8209 SEPULVEDA	141901013 W	1408:19 G03-007	ASSAULT WITH DEADLY WEAP	08/16/2014
HERRERA, NORMA	8209 SEPULVEDA	141901013 W	1408:19 G03-007	ASSAULT WITH DEADLY WEAP	08/16/2014
VAGHELA, KETAN	8209 SEPULVEDA	141901013 W	1408:19 G03-007	ASSAULT WITH DEADLY WEAP	08/16/2014
EVIDENCE, MISN	8209 SEPULVEDA	141907077 V	87	PROPERTY - EVIDENCE/ NON-	02/24/2014

PANORAMA MOTEL AFTER §41.49 SUSPENSION					31 CRIME/ARR
GAMMAGE, CRYSTAL JOVONNE	8209 SEPULVEDA	141907077 A	3875659	87	PROPERTY - EVIDENCE/ NON- 02/24/2014
STYKE, RICHARD RONALD	8209 SEPULVEDA	141908295 A	1419082 95	CT	BOOKING CHARGE : 647(B)P 03/17/2014
DURSO, JOHN PALMER	8209 SEPULVEDA	141909263 A	3912613	87	PROPERTY - EVIDENCE/ NON- 04/01/2014
POLLITT, LAUREN	8209 SEPULVEDA	141909263 A	3912590	87	PROPERTY - EVIDENCE/ NON- 04/01/2014
EVIDENCE, MISN	8209 SEPULVEDA	141909263 V		87	PROPERTY - EVIDENCE/ NON- 04/01/2014
EVIDENCE, MISN	8209 SEPULVEDA	141910591 V		CT	PROPERTY - EVIDENCE/ NON- 04/25/2014

ALEXANDER, ANTONAE	8209 SEPULVEDA	141910591 A	3938513	CT	PROPERTY - EVIDENCE/ NON-	04/25/2014
ASHORZADEH, SEAN SION	8209 SEPULVEDA	141910776 V		1404:19 A02-060	BURGLARY FROM VEHICLE	04/28/2014
SUSPECT, ONE	8209 SEPULVEDA	141910776 S		1404:19 A02-060	BURGLARY FROM VEHICLE	04/28/2014
JOHNSON, MERLE	8209 SEPULVEDA	141911475 V		1405:19 A03-045	VEHICLE - STOLEN	05/07/2014
LITTLEJOHN, OSCAR MAURICE	8209 SEPULVEDA	141912092 A	3978179	87	PROPERTY - EVIDENCE/ NON-	05/21/2014
EVIDENCE, MISN	8209 SEPULVEDA	141912092 V		87	PROPERTY - EVIDENCE/ NON-	05/21/2014

EVIDENCE, MISN	8209 SEPULVEDA	141912182 V		CT	PROPERTY - EVIDENCE/ NON-	05/22/2014
HENRY, KEYSHIA	8209 SEPULVEDA	141912182 A	3979554	CT	PROPERTY - EVIDENCE/ NON-	05/22/2014
DENCER, FREDERICK	8209 SEPULVEDA	141912922 A	3990544	1406:19 S03-002	KIDNAPPIN G - FOR SEX MOT	06/02/2014
MOSBY, TYQUISHA SHANAE	8209 SEPULVEDA	141912922 V		1406:19 S03-002	KIDNAPPIN G - FOR SEX MOT	06/02/2014
CANIZALES, VICTORIA	8209 SEPULVEDA	141913058 V		1406:19 A02-027	VEHICLE - STOLEN	06/03/2014
HAYNES, ALEXIS	8209 SEPULVEDA	141913098 V		19V	LETTERS, LEWD	05/31/2014
PRESCOTT, ELCIE	8209 SEPULVEDA	141913098 A	3994745	19V	LETTERS, LEWD	05/31/2014

RVD, MISN	8209 SEPULVEDA	141913298 V		1406:19 A99-035	VEHICLE - RECOVERED	06/08/2014
CHAVEZ, FERNANDO	8209 SEPULVEDA	141913831 V		1406:19 S01-018	CHILD ENDANGERMENT/NEG.	05/15/2014
SUSPECT, MICHAEL	8209 SEPULVEDA	141913831 S		1406:19 S01-018	CHILD ENDANGERMENT/NEG.	05/15/2014
PAZ, COLINA	8209 SEPULVEDA	141913831 P		1406:19 S01-018	CHILD ENDANGERMENT/NEG.	05/15/2014
PANORAMAMOTEL	8209 SEPULVEDA	141914459 V		CT	TRESPASSING	06/28/2014
MCCRAY, ANDRE	8209 SEPULVEDA	141914459 A	4016988	CT	TRESPASSING	06/28/2014
DURR, JEREMY ALEXANDER	8209 SEPULVEDA	141915186 A	4028759	1407:19 G02-006	PROPERTY - EVIDENCE/ NON-	07/11/2014

EVIDENCE, MISN	8209 SEPULVEDA	141915186 V	1407:19 G02-006	PROPERTY - EVIDENCE/ NON-	07/11/2014
SALVADOR, PALOMINO M	8209 SEPULVEDA	141915368 V	1407:19 B04-009	THEFT PLAIN - PETTY ($95	07/14/2014
STONER, RHONDA LEE	8209 SEPULVEDA	141915741 V	1407:19 M04-063	SPOUSAL (COHAB) ABUSE -	07/16/2014
STONER, MICHAEL	8209 SEPULVEDA	141915741 S	1407:19 M04-063	SPOUSAL (COHAB) ABUSE -	07/16/2014
COMPLAINTAP P, MISSION	8209 SEPULVEDA	141916330 V	19	NON-CRIME (INCLUDIN G TRO	05/22/2014
KARAPOGOSY AN, NEKTAR	8209 SEPULVEDA	141916599 V	1408:19 B05-005	THEFT PLAIN - PETTY ($95	08/03/2014

PANORAMA MOTEL AFTER §41.49 SUSPENSION 31 CRIME/ARR

VAGHELA, KETAN KUMAR	8209 SEPULVEDA	141916829	W		1408:19 B02-008	THEFT PLAIN - PETTY ($95	08/06/2014
CARR, DANIEL	8209 SEPULVEDA	141916829	V		1408:19 B02-008	THEFT PLAIN - PETTY ($95	08/06/2014
LUND, JAMES MARTIN	8209 SEPULVEDA	3872693	A	3872693	CT	BOOKING CHARGE: 23152(A	02/21/2014
GAMMAGE CRYSTAL JOVONNE	8209 SEPULVEDA	3875659	A	3875659	87	BOOKING CHARGE: 11377(A	02/24/2014
POLLITT, LAUREN	8209 SEPULVEDA	3912590	A	3912590	87	BOOKING CHARGE: 11350(A	04/01/2014
DURSO, JOHN PALMER	8209 SEPULVEDA	3912613	A	3912613	87	BOOKING CHARGE: 11377(A	04/01/2014

PANORAMA MOTEL AFTER §41.49 SUSPENSION 31 CRIME/ARR

SLITZKY, MICHAEL	8209 SEPULVEDA	3924162	A	3924162	CT	BOOKING CHARGE: 3454(C)	04/12/2014
ALEXANDER, ANTONAE	8209 SEPULVEDA	3938513	A	3938513	CT	BOOKING CHARGE: 653.22(	04/25/2014
LITTLEJOHN, OSCAR MAURICE	8209 SEPULVEDA	3978179	A	3978179	87	BOOKING CHARGE: 11350(A	05/21/2014
ALIAS, COURTNEY	8209 SEPULVEDA	3979554	A	3979554	CT	BOOKING CHARGE: 647(B)P	05/22/2014
HENRY, KEYSHIA	8209 SEPULVEDA	3979554	A	3979554	CT	BOOKING CHARGE: 647(B)P	05/22/2014
DENCER, FREDERICK	8209 SEPULVEDA	3990544	A	3990544	1406:19 S03-002	BOOKING CHARGE: 207(A)P	06/02/2014

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MONIKER, PLUMMER	8209 SEPULVEDA	3997365	A	3997365	1406:19 A02-019	BOOKING CHARGE: 10851(A	06/08/2014
REYES, OSVALDO	8209 SEPULVEDA	3997365	A	3997365	1406:19 A02-019	BOOKING CHARGE: 10851(A	06/08/2014
CARRILLO, RICKI ANN	8209 SEPULVEDA	4002097	A	4002097	CT	BOOKING CHARGE: 653.22(	06/12/2014
WATKINS, KEYMAH	8209 SEPULVEDA	4008706	A	4008706	CT	BOOKING CHARGE: 647(B)P	06/19/2014
TILLES, KESHIA	8209 SEPULVEDA	4016342	A	4016342	CT	BOOKING CHARGE: 653.22(	06/27/2014
MCCRAY, ANDRE	8209 SEPULVEDA	4016988	A	4016988	CT	BOOKING CHARGE: LAMC	06/28/2014

PANORAMA MOTEL AFTER §41.49 SUSPENSION 31 CRIME/ARR

SANDOVAL, EDGAR	8209 SEPULVEDA	4024862	A	4024862	CT	BOOKING CHARGE: 14601.1	07/06/2014
MONIKER, DROOPY	8209 SEPULVEDA	4028759	A	4028759	1407:19 G02-006	BOOKING CHARGE: 21810PC	07/11/2014
DURR, JEREMY ALEXANDER	8209 SEPULVEDA	4028759	A	4028759	1407:19 G02-006	BOOKING CHARGE: 21810PC	07/11/2014
RAMIREZ, MANUEL	8209 SEPULVEDA	4067263	A	4067263	1408:19 G03-007	BOOKING CHARGE: A187(A)	08/16/2014

MOTEL 6 PRIOR TO §41.49 SUSPENSION 24 CRIME/ARR

DCTS Search For: Location	*Event Address Search* *08/20/2014*
Conducted by: MOORE, ERIC	*Street Number From: 6909* *Street Number To: 6909* *Pages 1-2*
	Street Name: SEPULVEDA
	Event Date From: 8/10/2013 *Event Date To: 2/10/2014*

Party Name	*Confid*	*Address*	*Report ID*	*Role*	*Bkd Under*	*Assigned*	*Crime Description*	*Crme/Arst Date*
DOWNEY, VINCENT DEE		6909 SEPULVEDA	130901114	A	3715086	87	PROPERTY - EVIDENCE/ NON-	09/17/2013
EVIDENCE, VNYS		6909 SEPULVEDA	130901114	V		87	PROPERTY - EVIDENCE/ NON-	09/17/2013
GUITNER, CHRISTOPHER ALLEN		6909 SEPULVEDA	130901165	A	3743684	87	PROPERTY - EVIDENCE/ NON-	10/15/2013
EVIDENCE, VNYS		6909 SEPULVEDA	130901165	V		87	PROPERTY - EVIDENCE/ NON-	10/15/2013

MOTEL 6 PRIOR TO §41.49 SUSPENSION — 24 CRIME/ARR

TURNER, JAMES	6909 SEPULVEDA	130915400 V		1308:09 P01-068	THEFT PLAIN - PETTY ($95	08/17/2013
SUSPECT, ONE	6909 SEPULVEDA	130915400 S		1308:09 P01-068	THEFT PLAIN - PETTY ($95	08/17/2013
SUSPECT, TWO	6909 SEPULVEDA	130915400 S		1308:09 P01-068	THEFT PLAIN - PETTY ($95	08/17/2013
EVIDENCE, VNYS	6909 SEPULVEDA	130916043 V		87	PROPERTY - EVIDENCE/ NON-	08/28/2013
CORONADO, EULOGIO	6909 SEPULVEDA	130916043 A	3693625	87	PROPERTY - EVIDENCE/ NON-	08/28/2013
RODRIGUEZ, LORRIE L	6909 SEPULVEDA	130916043 W		87	PROPERTY - EVIDENCE/ NON-	08/28/2013

EVIDENCE, VNYS	6909 SEPULVEDA	130916318	V		87	PROPERTY - EVIDENCE/ NON-	09/03/2013
MENENDEZ, DEVON	6909 SEPULVEDA	130916318	A	3700121	87	PROPERTY - EVIDENCE/ NON-	09/03/2013
VAN NUYS NARCO, EVIDENCE	6909 SEPULVEDA	130917024	V		09	PROPERTY - EVIDENCE/ NON-	09/16/2013
MCCRAY, DON LORENZO	6909 SEPULVEDA	130917024	A		09	PROPERTY - EVIDENCE/ NON-	09/16/2013
BARAHONA, CARLOS DANIEL	6909 SEPULVEDA	130917029	A	1309170 29	CT	BOOKING CHARGE : 41.27CL	09/16/2013
SCHWIEGER, ROBERT	6909 SEPULVEDA	130922123	S		1312:09 P01-091	THEFT PLAIN - PETTY ($95	12/26/2013

NASTARAN, AFSHAR	6909 SEPULVEDA	130922123	V		1312:09 P01-091	THEFT PLAIN - PETTY ($95	12/26/2013
EVIDENCE, VNYS	6909 SEPULVEDA	190922199	V		87	PROPERTY - EVIDENCE/ NON-	12/28/2013
GURROLA, JOSE NAVA	6909 SEPULVEDA	190922199	A	3816606	87	PROPERTY - EVIDENCE/ NON-	12/28/2013
BAKER, DENNIS BRADFORD	6909 SEPULVEDA	140905322	A	3846030	09	PROPERTY - EVIDENCE/ NON-	01/26/2014
BENTLEY, NATHAN	6909 SEPULVEDA	140905322	W		09	PROPERTY - EVIDENCE/ NON-	01/26/2014
EVIDENCE, VNYS	6909 SEPULVEDA	140905322	V		09	PROPERTY - EVIDENCE/ NON-	01/26/2014

MOTEL 6 PRIOR TO §41.49 SUSPENSION — 24 CRIME/ARR

BROWN, NATALIE	6909 SEPULVEDA	140905322 W		09	PROPERTY - EVIDENCE/ NON-	01/26/2014
ADAMS, JOYCELYN	6909 SEPULVEDA	140905434 A	3848105	CT	PROPERTY - EVIDENCE/ NON-	01/29/2014
EVIDENCE, VNYS	6909 SEPULVEDA	140905434 V		CT	PROPERTY - EVIDENCE/ NON-	01/29/2014
HANAWAY, KALI	6909 SEPULVEDA	140905486 V		1402:37 N01-001	S.C.A.R. (SUSPECTE D CHILD	01/29/2014
HANAWAY, BRADLEY	6909 SEPULVEDA	140905486 P		1402:37 N01-001	S.C.A.R. (SUSPECTE D CHILD	01/29/2014
KENT, ELISE	6909 SEPULVEDA	140905486 P		1402:37 N01-001	S.C.A.R. (SUSPECTE D CHILD	01/29/2014

CORONADO, EULOGIO	6909 SEPULVEDA	3693625	A	3693625	87	BOOKING CHARGE : 11377(A	08/28/2013
MONIKER, GORDO	6909 SEPULVEDA	3693625	A	3693625	87	BOOKING CHARGE : 11377(A	08/28/2013
BAUN, MARITZA	6909 SEPULVEDA	3699264	A	3699264	CT	BOOKING CHARGE : 4573.5P	09/02/2013
LEMUS, MARIA	6909 SEPULVEDA	3699264	A	3699264	CT	BOOKING CHARGE : 4573.5P	09/02/2013
MENENDEZ, DEVON	6909 SEPULVEDA	3700121	A	3700121	87	BOOKING CHARGE : 11377(A	09/03/2013
GAMBOA, MARIO	6909 SEPULVEDA	3708707	A	3708707	CT	BOOKING CHARGE : 3000.08	09/11/2013

MOTEL 6 PRIOR TO §41.49 SUSPENSION

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MCCRAY, DON LORENZO	6909 SEPULVEDA	3714286	A	3714286	87	BOOKING CHARGE : 11377(A	09/16/2013
DOWNEY, VINCENT DEE	6909 SEPULVEDA	3715086	A	3715086	87	BOOKING CHARGE : 11377(A	09/17/2013
BRADFORD, ARNELL	6909 SEPULVEDA	3738635	A	3738635	CT	BOOKING CHARGE : 484(A)P	10/10/2013
GUITNER, CHRISTOPHER ALLEN	6909 SEPULVEDA	3743684	A	3743684	87	BOOKING CHARGE : 11377(A	10/15/2013
MILLER, LYNDSEY YVETTE	6909 SEPULVEDA	3765200	A	3765200	09	BOOKING CHARGE : 490.1PC	11/06/2013
LISHEY, MILES	6909 SEPULVEDA	3765201	A	3765201	CT	BOOKING CHARGE : 853.7PC	11/06/2013

MOTEL 6 PRIOR TO §41.49 SUSPENSION — 24 CRIME/ARR

SMITH, QUINLEY PATRICE	6909 SEPULVEDA	3765207	A	3765207	09	BOOKING CHARGE : 647(B)P	11/06/2013
MONIKER, JIMMY	6909 SEPULVEDA	3777885	A	3777885	1311:09 B11-006	BOOKING CHARGE : 3454(C)	11/18/2013
NORRIS, JAMES	6909 SEPULVEDA	3777885	A	3777885	1311:09 B11-006	BOOKING CHARGE : 3454(C)	11/18/2013
GURROLA, JOSE NAVA	6909 SEPULVEDA	3816606	A	3816606	87	BOOKING CHARGE : 11350(A	12/28/2013
MONIKER, SINISTER	6909 SEPULVEDA	3816606	A	3816606	87	BOOKING CHARGE : 11350(A	12/28/2013
ALLEN, ELBERT LEE	6909 SEPULVEDA	3829550	A	3829550	CT	BOOKING CHARGE : 853.7PC	01/10/2014

MOTEL 6 PRIOR TO §41.49 SUSPENSION 24 CRIME/ARR

BAKER, DENNIS BRADFORD	6909 SEPULVEDA	3846030	A	3846030	87	BOOKING CHARGE : 11350(A	01/26/2014
ADAMS, JOYCELYN	6909 SEPULVEDA	3848105	A	3848105	09	BOOKING CHARGE : 647(B)P	01/29/2014

DCTS Search For: Location
Conducted by: MOORE, ERIC

Event Address Search *08/20/2014*
Street Number From: 6909 *Street Number To: 6909* *Pages 1-2*
Street Name: SEPULVEDA
Event Date From: 02/10/2014 *Event Date To: 8/10/2014*

Party Name	*Confid*	*Address*	*Report ID*	*Role*	*Bkd Under*	*Assigned*	*Crime Description*	*Crme/Arst Date*
EVIDENCE, VNYS		6909 SEPULVEDA	140906095	V		87	PROPERTY - EVIDENCE/ NON-	02/12/2014
BAKER, KATHIE KARLENE		6909 SEPULVEDA	140906095	R		87	PROPERTY - EVIDENCE/ NON-	02/12/2014
RVD, VNY		6909 SEPULVEDA	140906906	V		1403:09 A03-007	IMPOUNDED VEHICLE	03/08/2014
FRANKLIN, WILLIAM DELBERT		6909 SEPULVEDA	140907560	A	3893383	87	PROPERTY - EVIDENCE/ NON-	03/13/2014

MOTEL 6 AFTER §41.49 SUSPENSION

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JORDAN, MITCHELL	6909 SEPULVEDA	140907560 A	3893381	87	PROPERTY - EVIDENCE/ NON-	03/13/2014
EVIDENCE, VNYS	6909 SEPULVEDA	140907560 V		87	PROPERTY - EVIDENCE/ NON-	03/13/2014
EVIDENCE, VNYS	6909 SEPULVEDA	140907797 V		09	PROPERTY - EVIDENCE/ NON-	03/19/2014
ABEGGLEN, CHRISTINA	6909 SEPULVEDA	140907797 A	3899239	09	PROPERTY - EVIDENCE/ NON-	03/19/2014
EVIDENCE, VNYS	6909 SEPULVEDA	140908306 V		CT	PROPERTY - EVIDENCE/ NON-	03/29/2014
SHELTON, AUJANEE	6909 SEPULVEDA	140908306 A	3910116	CT	PROPERTY - EVIDENCE/ NON-	03/29/2014

MOTEL 6 AFTER §41.49 SUSPENSION 27 CRIME/ARR

SUTTLES, JASMYNE CHERIE	6909 SEPULVEDA	140909168 V		1405:09 H01-001	SUICIDE - ATTEMPT	04/18/2014
HERNANDEZ, SABINO	6909 SEPULVEDA	140909168 R		1405:09 H01-001	SUICIDE - ATTEMPT	04/18/2014
BARNES, JAMES STANLEY	6909 SEPULVEDA	140909536 A	3952632	87	PROPERTY - EVIDENCE/ NON-	04/27/2014
EVIDENCE, VNYS	6909 SEPULVEDA	140909536 V		87	PROPERTY - EVIDENCE/ NON-	04/27/2014
EVIDENCE, NARCO VNYS	6909 SEPULVEDA	140912029 V		87	PROPERTY - EVIDENCE/ NON-	06/19/2014
EVIDENCE, VNYS	6909 SEPULVEDA	140912112 V		87	PROPERTY - EVIDENCE/ NON-	06/21/2014

MOTEL 6 AFTER §41.49 SUSPENSION

						27 CRIME/ARR
HUGHES, KAREN	6909 SEPULVEDA	140912112 A	4010134	87	PROPERTY - EVIDENCE/ NON-	06/21/2014
JARADAT, RAMMY	6909 SEPULVEDA	140912112 A	4010170	87	PROPERTY - EVIDENCE/ NON-	06/21/2014
EVIDENCE, VNYS	6909 SEPULVEDA	140912889 V		87	PROPERTY - EVIDENCE/ NON-	07/07/2014
LLOYD, JAMIE	6909 SEPULVEDA	140912889 A	4025498	87	PROPERTY - EVIDENCE/ NON-	07/07/2014
CALLOWAY, JEFFREY	6909 SEPULVEDA	140912889 A	4025523	87	PROPERTY - EVIDENCE/ NON-	07/07/2014
EVIDENCE, FHL	6909 SEPULVEDA	140913355 V		09	PROPERTY - EVIDENCE/ NON-	07/17/2014

MOTEL 6 AFTER §41.49 SUSPENSION 27 CRIME/ARR

YOUNG, JANISHA	6909 SEPULVEDA	140913355	A	4035197	09	PROPERTY - EVIDENCE/ NON-	07/17/2014
SHEEHEN, MICHAEL	6909 SEPULVEDA	140914074	S		1408:09 C02-001	BATTERY - SIMPLE ASSAULT	07/31/2014
JARRETT, BARBARA RONTAVIA	6909 SEPULVEDA	140914074	V		1408:09 C02-001	BATTERY - SIMPLE ASSAULT	07/31/2014
COLDERS, MAIRAH	6909 SEPULVEDA	140914527	V		1408:09 M20-009	NON-CRIME (INCLUDIN G TRO	08/10/2014
SALAAM, BASHIR	6909 SEPULVEDA	140914527	W		1408:09 M20-009	NON-CRIME (INCLUDIN G TRO	08/10/2014
RVD, VNY	6909 SEPULVEDA	141511178	V		1405:09 A99-087	IMPOUNDE D VEHICLE	05/22/2014

MOTEL 6 AFTER §41.49 SUSPENSION 27 CRIME/ARR

RVD, VNY	6909 SEPULVEDA	141610398	V		1406:16 A01-052	VEHICLE - RECOVERED	06/27/2014
PATTERSON, DERMOND EARL	6909 SEPULVEDA	141610398	A	4015737	1406:16 A01-052	VEHICLE - RECOVERED	06/27/2014
RODRIGUEZ, RAFAEL MILLAN	6909 SEPULVEDA	3869649	A	3869649	1402:09 R02-007	BOOKING CHARGE : 487(C)P	02/19/2014
KING, DANIEL	6909 SEPULVEDA	3887535	A	3887535	1403:09 A03-007	BOOKING CHARGE : 10851(A	03/08/2014
MONIKER, DANNY	6909 SEPULVEDA	3887535	A	3887535	1403:09 A03-007	BOOKING CHARGE : 10851(A	03/08/2014
ALIAS, JENNA	6909 SEPULVEDA	3887541	A	3887541	1403:09 A03-007	BOOKING CHARGE : 10851(A	03/08/2014

MOTEL 6 AFTER §41.49 SUSPENSION — 27 CRIME/ARR

TAPPER, JENIFER	6909 SEPULVEDA	3887541	A	3887541	1403:09 A03-007	BOOKING CHARGE : 10851(A	03/08/2014
JORDAN, MITCHELL	6909 SEPULVEDA	3893381	A	3893381	87	BOOKING CHARGE : 11351HS	03/13/2014
BAKER, DENNIS BRADFORD	6909 SEPULVEDA	3893382	A	3893382	CT	BOOKING CHARGE : 11350(A	03/13/2014
FRANKLIN, WILLIAM DELBERT	6909 SEPULVEDA	3893383	A	3893383	87	BOOKING CHARGE : 11351HS	03/13/2014
SHELTON, AUJANEE	6909 SEPULVEDA	3910116	A	3910116	CT	BOOKING CHARGE : 647(B)P	03/29/2014
HUDSON, MELISSA	6909 SEPULVEDA	3956096	A	3956096	CT	BOOKING CHARGE : 647(B)P	04/30/2014

MOTEL 6 AFTER §41.49 SUSPENSION 27 CRIME/ARR

MCMULLEN, EMERALD EBONY	6909 SEPULVEDA	3958483	A	3958483	CT	BOOKING CHARGE : 647(B)P	05/02/2014
NONE,	6909 SEPULVEDA	3958483	A	3958483	CT	BOOKING CHARGE : 647(B)P	05/02/2014
MARTINEZ, MELANIE	6909 SEPULVEDA	3958496	A	3958496	CT	BOOKING CHARGE : 647(B)P	05/02/2014
LAMM, SHANNON MARIE	6909 SEPULVEDA	4008637	A	4008637	87	BOOKING CHARGE : 11377(A	06/19/2014
HENRY, MICHAEL ALAN	6909 SEPULVEDA	4008685	A	4008685	87	BOOKING CHARGE : 11378HS	06/19/2014
KEAL, AMY ELIZABETH	6909 SEPULVEDA	4008701	A	4008701	87	BOOKING CHARGE : 11350(A	06/19/2014

MOTEL 6 AFTER §41.49 SUSPENSION 27 CRIME/ARR

HALL, SHAFORA SHELLEY	6909 SEPULVEDA	4009116	A	4009116	CT	BOOKING CHARGE : 647(B)P	06/20/2014
MONIKER, VETA ALLEN	6909 SEPULVEDA	4010134	A	4010134	87	BOOKING CHARGE : 11350(A	06/21/2014
HUGHES, KAREN	6909 SEPULVEDA	4010134	A	4010134	87	BOOKING CHARGE : 11350(A	06/21/2014
JARADAT, RAMMY	6909 SEPULVEDA	4010170	A	4010170	87	BOOKING CHARGE : 11350(A	06/21/2014
PATTERSON, DERMOND EARL	6909 SEPULVEDA	4015737	A	4015737	1406:16 A01-052	BOOKING CHARGE : 647(D)(	06/27/2014
FUENTES, CHERI	6909 SEPULVEDA	4015804	A	4015804	CT	BOOKING CHARGE : 23152(B	06/27/2014

MOTEL 6 AFTER §41.49 SUSPENSION 27 CRIME/ARR

LLOYD, JAMIE	6909 SEPULVEDA	4025498	A	4025498	87	BOOKING CHARGE : 11377(A	07/07/2014
CALLOWAY, JEFFREY	6909 SEPULVEDA	4025523	A	4025523	87	BOOKING CHARGE : 11377(A	07/07/2014
LUND, SORAYA ELLEN	6909 SEPULVEDA	4027304	A	4027304	CT	BOOKING CHARGE : 653.22(	07/09/2014
YOUNG, JANISHA	6909 SEPULVEDA	4035197	A	4035197	09	BOOKING CHARGE : 653.22(	07/17/2014

BRONCO MOTEL PRIOR TO §41.49 SUSPENSION 13 CRIME/ARR

DCTS Search For: Location
Conducted by: LEVIN, JED

Event Address Search *08/19/2014*
Street Number From: 5501 *Street Number To: 5501* *Page 1*
Street Name: WESTERN
Event Date From: 08/10/2013 Event Date To: 02/10/2014

Party Name	*Confid*	*Address*	*Report ID*	*Role*	*Bkd Under*	*Assigned*	*Crime Description*	*Crme/Arst Date*
SCOTT, KURTIS		5501 WESTERN	131200881	W		12	PROPERTY - EVIDENCE/ NON-	10/30/2013
EVIDENCE, SST		5501 WESTERN	131200881	V		12	PROPERTY - EVIDENCE/ NON-	10/30/2013
MENDOZA, FRANCISCO		5501 WESTERN	131200881	A	3758511	12	PROPERTY - EVIDENCE/ NON-	10/30/2013
MENDOZA, OMAR		5501 WESTERN	131200881	W		12	PROPERTY - EVIDENCE/ NON-	10/30/2013

FORD, ROBERT	5501 WESTERN	131200881 W	12	PROPERTY - EVIDENCE/ NON-	10/30/2013
EVIDENCE, SST	5501 WESTERN	131200882 V	12	PROPERTY - EVIDENCE/ NON-	10/30/2013
SCOTT, KURTIS STEPHENS	5501 WESTERN	131200882 S	12	PROPERTY - EVIDENCE/ NON-	10/30/2013
SUSPECT, NISHA	5501 WESTERN	131220136 S	1309:12 A04-006	FEL VNDL - TO VEHICLE (C	08/28/2013
STEPHEN, KURTIS	5501 WESTERN	131220136 W	1309:12 A04-006	FEL VNDL - TO VEHICLE (C	08/28/2013
REED, MELANIE J	5501 WESTERN	131220136 V	1309:12 A04-006	FEL VNDL - TO VEHICLE (C	08/28/2013

BRONCO MOTEL PRIOR TO §41.49 SUSPENSION — 13 CRIME/ARR

KELLY, JAMES	5501 WESTERN	131223622 V		1310:12 R01-038	ROBBERY - STREET	10/22/2013
SUSPECT, ONE	5501 WESTERN	131223622 S		1310:12 R01-038	ROBBERY - STREET	10/22/2013
SUSPECT, CHYNA	5501 WESTERN	131223622 S		1310:12 R01-038	ROBBERY - STREET	10/22/2013
SUSPECT, REMIX	5501 WESTERN	131223622 S		1310:12 R01-038	ROBBERY - STREET	10/22/2013
GRACE, KEITH ALLEN	5501 WESTERN	131224151 A	3759163	1310:12 R01-056	PROPERTY - EVIDENCE/ NON-	10/30/2013
EVIDENCE, SST	5501 WESTERN	131224151 V		1310:12 R01-056	PROPERTY - EVIDENCE/ NON-	10/30/2013
SUSPECT, ONE	5501 WESTERN	131225733 S		1311:12 G04-005	ASSAULT WITH DEADLY WEAP	11/26/2013

BRONCO MOTEL PRIOR TO §41.49 SUSPENSION 13 CRIME/ARR

JARIWALA, MAYUR	5501 WESTERN	131225733 W	1311:12 G04-005	ASSAULT WITH DEADLY WEAP	11/26/2013
HALE, NORMA	5501 WESTERN	131225733 V	1311:12 G04-005	ASSAULT WITH DEADLY WEAP	11/26/2013
JARIWALA, TINA	5501 WESTERN	131225733 W	1311:12 G04-005	ASSAULT WITH DEADLY WEAP	11/26/2013
MILLER, JOHN	5501 WESTERN	131225733 W	1311:12 G04-005	ASSAULT WITH DEADLY WEAP	11/26/2013

BRONCO MOTEL PRIOR TO §41.49 SUSPENSION 13 CRIME/ARR

CARTER, MYESHA LOUISE	5501 WESTERN	131225733	W		1311:12 G04-005	ASSAULT WITH DEADLY WEAP	11/26/2013
PRESTON, NORMA	5501 WESTERN	131225976	A	3789293	12	PROPERTY - EVIDENCE/ NON-	11/30/2013
EVIDENCE, SST	5501 WESTERN	131225976	V		12	PROPERTY - EVIDENCE/ NON-	11/30/2013
EANHOLDING SLLC	5501 WESTERN	141205382	V		1401:12 A01-089	VEHICLE - STOLEN	01/24/2014
ELDER, RASHANDA MARIE	5501 WESTERN	3664727	A	3664727	CT	BOOKING CHARGE : 653.22(	08/21/2013
COOPER, ANTHONY	5501 WESTERN	3720595	A	3720595	1309:12 A01-065	BOOKING CHARGE : 10851(A	09/22/2013

BRONCO MOTEL PRIOR TO §41.49 SUSPENSION 13 CRIME/ARR

WEST, JOSHAYLA	5501 WESTERN	3720623	A	3720623	1309:12 A01-065	BOOKING CHARGE : 459PC	09/22/2013
MENDOZA, FRANCISCO	5501 WESTERN	3758511	A	3758511	87G	BOOKING CHARGE : 11351.5	10/30/2013
GRACE, KEITH ALLEN	5501 WESTERN	3759163	A	3759163	1310:12 R01-056	BOOKING CHARGE : 25400(A	10/30/2013

App. 173

Arrest Report

[Fold-Out Exhibit, see next two pages]

MULTI 2

ARREST REPORT

(1)

BKG NO. 4008582 | U/D | LOC. BKD. 4212 | DR LIC. NO. NONE | STATE | MT N

ARRESTEE'S LAST NAME: THOMPSON | FIRST: LAURA | MIDDLE | SUF

ADDRESS: 1942 TRANSIENT | APT NO.

CITY: LOS ANGELES | STATE: CA

SEX	DESCENT	HAIR	EYES	HEIGHT	WEIGHT	BIRTHDATE	AGE
F	B	BLK	BRO	506	110	032467	47

VEHICLE LIC. NO. | STATE | A.D. 1213 | AKA LAST / FIRST / OR NICKNAME

BIRTHPLACE: PHOENIX AZ / UNK US | PRIOR INV. UNIT 87 | INV. DETAINED AT | AD. CHG N

DIVISION	DETAIL ARRESTING	DATE ARRESTED	TIME ARR.	TIME BKD
4287	NDSB	061914	1710	1908

LOCATION OF ARREST: 1742 W 55TH ST | BAIL 55000 | TOTAL BAIL 55000

TYP	CHARGE & CODE	DESCRIPTION	WARRANT NO.
F	11352(A)HS	182PC CON COCAINE SALES	

DR. 141214756

THOMPSON / LAURA

CRIME RPT. 141214756

CRIME REPORT NUMBERS: DR 141214756 | CR | ID A10029338 | MASH 04413495 | FBI 652789VA2 | CDC # | PROBATION #

A.I. | CRIMS | WARR | AJIS | KLSE | PAC | AMOR

ADMONITION OF RIGHTS (WHEN APPLICABLE)

THE ADMONITION OF RIGHTS WAS READ VERBATIM PER FORM 15.03.00 BY:

SEE PAGE #11

PEDROZA # 27626

NAME | SERIAL NO.

SOCIAL SECURITY NO. 570190206

ARRAIGN DATE | TIME | COURT | LOCATION CRIME COMMITTED: 5501 S WESTERN AVE | R.D. 1213 | RESIDENCE PHONE NO. NONE

EMPLOYER / SCHOOL: UNEMPLOYED

OCCUPATION / RANK: LABORER | INV. DIV. N/V

CLOTHING WORN: GRY SWEATSHIRT, WHT TOP, PANTS

EXACT LOCATION / DISPOSITION ARRESTEE'S VEHICLE | HOLD FOR:

JET CONNECTING RPTS. BY TYPE & IDENTIFYING NOS.

VEHICLE USED (YEAR, MAKE, MODEL, TYPE, COLORS, LIC. NO., ID MARKS.) | PASSENGERS M | F

COMPLAINTS / EVID. OF ILLNESS / INJURY WHOM TREATED: NO AFAB NARCO TASK FORCE

DRIVING WEB (DIRECTION & NAME OF STREET AT OR BETWEEN STREETS) | RETAINED $ | DEPOSITED $

NONE

INVOLVED PERSONS Code: V: VICTIM W: WITNESS P/A: ARRESTING PRIVATE PARTY TO: TRUE OWNER R: PERSON RPTG. 459: B: PERSON RECEIVING G: PERSON DISCHARGING | JUV: P: BOTH PARENTS G: GUARDIAN

NAME	V & W'S	RES.	OCC.	D.O.B.	ADDRESS	CITY	ZIP	PHONE: DAY	X
					R			F	
					P			CELL	
					P-MAIL				
					B				
					B			CELL	
					E-MAIL				
					B				
					B			CELL	
					P-MAIL				

USE ON NOTICE

DNO

COMBINED CRIME REPORT

IF MULTI ARRESTEES THIS SECTION & ARREST CRIME RPT. CHECK BOX IF COMPLETED ON ONLY ONE PAGE SHEET

TYPE OF OFFENSE | VICTIM'S OCCUPATION

DATE AND TIME CRIME OCCURRED | DATE REPORTED | TOTAL $ | EST. DAMAGE $ | TYPE PREMISES

(DR) IF NO ONLY: POINT AND METHOD OF ENTRY | WEAPON / FORCE / INSTRUMENT / AIDS | VICT'S VEH. (YR, MAKE, TYPE, LIC.) (IF NO ONLY)

MO (UNIQUE ACTIONS)

☐ GANG RELATED ☐ MOTIVATED BY HATRED / PREJUDICE ☐ DOMESTIC VIOLENCE ☐ MANDATORY MARSY'S RIGHTS CARD PROVIDED TO THE VICTIM

COMBINED EVID. RPT.

USE THIS SECTION IN LIEU OF PROPERTY REPORT IF ONLY ONE ARRESTEE, NO GUN, AND NO MORE THAN 3 ITEMS OF EVID.

EVID. BKD. PROPT DIV MDE | IS NEW EVIDENCE? ⊙ N | Preliminary Drug Test | EVID. / SAFE DEPOSIT BOX NO. | SERIAL NO. | WITNESS OFCR. | SERIAL NO.

ITEM	QUAN.	ARTICLE	SERIAL NO. / TYPE TEST OF DRUG	BRAND / MODEL OF GUN	CALIBER OF GUN	MODEL NO. / DRUG TEST RESULTS	MISC.

SEE PROPT REPORT

EXTRA COPY TO

APPROVAL / REPORTING OFFICERS

APPROVING OFFICER'S REPORT	Ramirez	SERIAL NO. 30131	RAP SHEET ATTACHED ☒ YES ☐ NO	REPORTING OFFICER	R. BOYKIN # 38979	DIV. & DETAIL GND	VIOLATION
2ND APPROVING OFFICER	620 0855	DATE 6/20	2ND REPORTING OFFICER				

JUVENILE DISPO.

Petition Requested: ☐ DETAINED ☐ RELEASED ☐ NON-BOOK ☐ NON BOOK WARR.

FINAL CHARGE, IF DIFFERENT THAN ORIGINAL (SECTION, CODE & DESCRIPTION)	IF REFERRED: AGENCY & PERSON ACCEPTING REFERRAL	PROPERTY BOOKED Y N / P 1550.5 W.I.C. COMPLETED Y N	BOOKING APPROVING	SERIAL NO.
			A/V COORD. REVIEWING	SERIAL NO.

11 ☐ C & R	12 ☐ EXON. INNOCENT	04 ☐ CYA	13 ☐ A/V TRAF. MISD	14 ☐ DEPT. JUN 30 2014 A A 0 1	SV / CLEAR
11 ☐ ACTION SUSP.	13 ☐ INSUFF. EVID.	05 ☐ PROBATION	17 ☐ FIRE DEPT.		
10 ☐ PROVED ADULT	03 ☐ COMMUNITY SERVICE	20 ☐ OTH. LAW ENF. AGENCY	18 ☐ DEPT. MENTAL HEALTH		

ARREST REPORT

BKG NO. 4008532 | U.S. | LOC. BKG 4212 | DMV LIC NO NONE | STATE | MV Y | SUB

ARRESTEE'S LAST NAME: STEPHEN | FIRST: KURTIS | MIDDLE: HORACE

ADDRESS: 8501 S WESTERN 415 | APT NO | STATE: CA

CITY: LOS ANGELES

SEX	DESCENT	HAIR	EYES	HEIGHT	WEIGHT	BIRTHDATE	AGE
M	B	BLK	BRO	601	350	050387	27

VEHICLE LIC. NO. | STATE | R.D. 1213 | AKA LAST: SCOTT FIRST: CURTIS OR NICKNAME

BIRTHPLACE: LOS ANGELE CA LOS ANGELES US | PROB. INV. UNIT 87 | JUV. DETAINED AT | AD. CHG. N

DIVISION	DETAIL ARRESTING	DATE ARRESTED	TIME ARR	TIME BKD
4287	NDSB	061914	1715	1841

LOCATION OF ARREST: 5501 S WESTERN AV | BAIL 30000 | TOTAL BAIL 30000 | WARRANT NO

TYP	CHARGE & CODE	DEFINITION
F	11352(A)HS	182PC CON COCAINE SALES

ADDITIONAL CHARGES (ON ADDL. WARR'S LIST NO., COURT, AND BAIL, INCL. P.A.)

DR. 141214756 | CRIME RPT. | EVID. RPT. | # MULT. ARREST DND IND TO: THOMPSON, LAURA | VICTIM'S NAME

MULTI 2 (3)

DR 141214756 | CII A26630159 | MAIN 32626994 | FBI 738826JC3 | CDC # | PROBATION #

A.I. | CNWS | WARR | A/K/A | FELSE | PAC | AWOL

ADMONITION OF RIGHTS (WHEN APPLICABLE)

THE ADMONITION OF RIGHTS WAS READ VERBATIM PER FORM 15.03.00 BY:

SEE PAGE 12

PEDROZA #27626

NAME | SERIAL NO.

SOCIAL SECURITY NO. 557952782

ARRAIGN. DATE | TIME | COURT | LOCATION CRIME COMMITTED SAA | R.D. 1213 | RESIDENCE PHONE NO. 323 2456125

EMPLOYER / SCHOOL: UNEMPLOYED

OCCUPATION / GRADE: JANITOR | PRIV. PROP. N/V

CLOTHING WORN: WHT TSHIRT, TAN SHORTS, SHOES

EXACT LOCATION / DISPOSITION ARRESTEE'S VEHICLE | HOLD FOR

LIST CONNECTING ARTS. BY TYPE & IDENTIFYING NOS. | VEHICLE USED (YEAR, MAKE, MODEL, TYPE, COLORS, LIC. NO. ID MARKS) | PASSENGERS M F

COMPLAINTS / EVID OF ILLNESS / INJURY WHOM TREATED | DRIVING VIA (DIRECTIONS & NAME OF STREET) AT OR BETWEEN STREETS | RETAINED | CASH $ | DEPOSITED $

AD AREA NARCO TASK FORCE

PRE-EXISTING MED CONDITION / 7TH RESPONSIBILITY

INVOLVED PERSONS Code: V victim W witness P/A arresting officer's initials TO true owner R reporting party 459 1 person residence no. 2 person garage no. JUV 1 both parents 2 guardian

MAINT	V & W'S	SEX	DESC	D.O.B.	ADDRESS	CITY	ZIP	PHONE	DAY
					R				
					B			CELL	
					E-MAIL				
					R				
					B			CELL	
					E-MAIL				
					R				
					B			CELL	
					E-MAIL				

COMBINED CRIME REPORT

IF MULTI. ARRESTEES THIS SECTION MUST BE COMPLETED ON ONLY ONE FACE SHEET. CHECK BOX IN COMPLETED ON ONLY ONE FACE SHEET.

TYPE OF OFFENSE | VICTS OCCUPATION

DATE AND TIME CRIME OCCURRED | TYPE PROPERTY | TOTAL $ | EST. DAMAGE $ | TYPE PROP. USED

ARREST DATE / TIME AND METHOD OF ENTRY | WEAPON / FORCE / INSTRUMENT USED | TYP / SEV ONLY / VICTS VISN (INCL. ASSAULT, TYPE, DR.)

NO. INVOLVED (INCL. VICTIMS)

☐ GANG RELATED ☐ MOTIVATED BY HATRED / PREJUDICE ☐ DOMESTIC VIOLENCE ☐ MANDATORY MARSY'S RIGHTS CARD PROVIDED TO THE VICTIM

COMBINED EVID. RPT. USE THIS SECTION IN LIEU OF PROPERTY REPORT IF ONLY ONE ARRESTEE, NO GUN, AND NO MORE THAN 3 ITEMS OF EVID.

LOC. EVID. BKD PROPT DIV | 10 YR DISP? 0 N | Preliminary Drug Test | SUPV / SPV OFCR. TESTING | SERIAL NO | PHONES OFCR | SERIAL NO

ITEM	QUAN	ARTICLE	SERIAL NO. / TYPE TEST OF DRUG	GRADE / GAGE / WEIGHT GRAMS	MODEL NO. / DRUG TEST RESULTS	MISC
			SEE PROPT	REPORT		

APPROVAL / REPORTING OFFICERS

APPROVING OFFICER'S REPORT | SERIAL NO 30131 | RAP SHEET ATTACHED OK ☐ YES ☐ NO | ARRESTING OFFICER R. ROMAN #38979 | DIV & DETAIL GND | WEIGHTED

DATE & TIME APPROVED 6/20 0855 | BY 76 JT | ARREST OFCR. | SERIAL NO | DIV

JUVENILE DISPO. Person Released: ☐ DETAINED ☐ RELEASED ☐ NON-BOOK ☐ NON-BOOK WARR

PUBLIC OFFENSE (IF DIFFERENT THAN CHARGE) (SECTION, CODE & DEFINITION) | REFERRED AGENCY & PERSON ACCEPTING RETURN | PROPERTY BOOKED? Y N IF YES, WAS ALL COMPLETED? Y N | SUPERVISOR APPROVING | SERIAL NO

ADV. COUNSEL REVIEWING | SERIAL NO

11 ☐ CAR	13 ☐ EXTEN-INNOCENT	04 ☐ CYA	14 ☐ JUV. TRAF. MISD.	18 ☐ DCFS	
11 ☐ ACTION SUSP.	12 ☐ REL-GROUP, EVID.	03 ☐ PROBATION	17 ☐ FIRE DEPT.	DPO JUN 30 2014 4 0 1	
14 ☐ PROVED ADULT	05 ☐ COMMUNITY SERVICE	09 ☐ OTH. LAW ENF. AGENCY	10 ☐ DEPT. MENTAL HEALTH		

03.01.02 (11/13) | INC# 140619003791 | ARREST REPORT

CONTINUATION SHEET

Los Angeles Police Department

Page No.		Type of Report	Booking No.	DR No.
2/12		Arrest	Multi-2	1412-14756
Item No.	QUAN	ARTICLE	SERIAL NO	BRAND
MODEL NO.		MISC DESCRIPTION (EG. COLOR, SIZE, INSCRIPTIONS, CALIBER, REVOLVER, ETC)	DOLLAR VALUE	

Deft-1: Thompson, Laura
Charge: 182/11352(a) H&S
DOB: 03/24/1967
BK: 4008582

Deft-2: Stephen, Kurtis Horace
Charge: 182/11532(a) H&S
DOB: 05/03/1987
BK: 4008532

Narcotics Division Major Enforcement Section
Buy Team:
Detective III Mossman #24281
Officer Mims #40112
Officer Pedroza #27626

Officer Lara #38452
Officer Lopez #39711
Detective II White # 32232
Detective II Kanchanamongkol #30239
Officer Boykin #38979
Officer Diaz #27680
Officer Williams #34529
Officer Gutierrez #38236

Uniformed Officers:
Officer Marquez #38954
Officer Martin #37191
Officer Torres #35332
Officer Tafoya #39069
Officer Jedlick #38395
Officer Zarate #33956

NARCOTIC EXPERTISE:
I have received a block of training in the academy for possession, ingestion, sales, recognition and packaging of narcotics. I have attended the 5 day Los Angeles Police Department Narcotics School. I have also attended the 8 hour Los Angeles Police Department 11550 H&S School. I have attended the Los Angeles City Attorney 11532 H&S course. I have attended the Street Drug Identification and Packaging course conducted by Serrato and Associates, Inc. I have made numerous arrests for possession and possession for sales of narcotics and dangerous drugs. I have worked in a plain clothes capacity for several narcotic related task forces. I have worked with Narcotics Division as a uniformed chase officer, and an undercover officer. I have spoken with numerous drug users and sellers regarding narcotics. I have attended roll call trainings regarding use, recognition, and packaging of narcotics

and dangerous drugs to enhance my own investigative abilities. Furthermore, I have conducted over 1,000 undercover narcotics buy bust operations.

SOURCE OF ACTIVITY:

On 06/19/14, at approximately 1705 hours, I (Officer Boykin 38979) was in plain clothes, working a buy-bust task force in conjunction with uniformed officers assigned to 77th, Southwest, and Southeast Divisions. I was in the area of 55th St and Western. I was wearing a one-way wire transmitter (Not recorded) for officer safety. Inc# 140619003791

INVESTIGATION:

I observed Defendant-1 (Thompson, Laura) standing at the entrance of the Bronco Motel (5501 S. Western Ave). As I walked past the entrance, I asked "You know who's got work (street vernacular for do you know who is selling drugs)?" Defendant Thompson asked "Is you the police?" to which I replied "Naw." Defendant Thompson then asked "Is you working with the police?" to which I replied "Naw." Defendant Thompson then stated "Gimmie the $20, and sit at the bottom of those stairs." I handed Defendant

CONTINUATION SHEET

Los Angeles Police Department

Page No.		Type of Report	Booking No.	DR No.
3/12		Arrest	Multi-2	1412-14756
Item No.	QU AN	ARTICLE	SERIAL NO	BRAND
MODEL NO.		MISC DESCRIPTION (EG. COLOR, SIZE, INSCRIPTIONS, CALIBER, REVOLVER, ETC)	DOLLAR VALUE	

Thompson a pre-recorded $20 bill, then sat at the bottom of the stairs on the south side of the motel. Defendant Thompson walked up the stairs to the second floor of the northeast side of the motel and out of my line of sight.

Ofcr Lara and Ofcr Lopez were parked inside the motel parking lot. Ofcr Lara and Ofcr Lopez observed me hand Defendant Thompson an unknown denomination of currency. Ofcr Lara and Ofcr Lopez observed Defendant Thompson walk upstairs, then knock on the window of Room 215. Ofcr Lara and Ofcr Lopez observed Defendant-2 (Stephen, Kurtis Horace) open the door, and meet with Defendant Thompson. Ofcr Lara and Ofcr Lopez observed Defendant Thompson

and Defendant Stephen walk inside room 215, and out of sight. Approximately 2 minutes later, Ofcr Lara and Ofcr Lopez observed Defendant Thompson exit room 215 and approach me. Ofcr Lara and Qfcr Lopez observed a hand to hand exchange consistent with that of a drug transaction between Defendant Thompson and I.

Defendant Thompson approached, and handed me two individually wrapped off white solids resembling Rock Cocaine. I handed Defendant Thompson a pre-recorded $5 bill, then walked away northbound on Western Ave while notifying my partners a drug transaction occurred.

Ofcr Mims was standing across the street on the east side of Western. Ofcr Mims observed me hand Defendant Thompson an item. Approximately 3 minutes later, Ofcr Mims observed a hand to hand exchange consistent with that of a drug transaction between Defendant Thompson and I. Ofcr Mims directed uniformed officers to detain Defendant Thompson.

Ofcr Martin and Ofcr Jedlick responded and took Defendant Thompson into custody. Ofcr Martin recovered the pre-recorded $5 from Defendant Thompson's left front pants pocket. The buy money was verified by Ofcr Pedroza. Ofcr Martin also recovered a clear plastic bindle containing off white solids resembling Rock Cocaine, and a glass pipe containing residue of an off white substance resembling Rock Cocaine from Defendant Thompson's left jacket pocket.

Ofcr Lara directed uniformed officers to room 215. Ofcrs knocked on the front door with negative results.

Detective II White obtained the room key from Management, and opened the door. Ofcr Tafoya, Ofcr Marquez, and Ofcr Zarate responded and took Defendant Stephen into custody. Ofcr Marquez recovered $1 from Defendant Stephen's right front shorts pocket. Detective II Kanchanamongkol recovered $139 along with Defendant Stephen's ID card in the top drawer of the nightstand east of the bed. Detective II White recovered a clear pill bottle containing a green plant material resembling Marijuana from the table inside the room.

ARREST:

Defendant Thompson and Defendant Stephen were arrested for 182/11352(a) H&S (conspiracy to sell Rock Cocaine).

BOOKING:

Defendant Thompson and Defendant Stephen were booked for 182/11352(a) H&S (conspiracy to sell Rock Cocaine) on the approval of 77th Division Watch Commander Sgt. Rangel (25993).

CONTINUATION SHEET

Los Angeles Police Department

Page No.		Type of Report	Booking No.	DR No.
4/12		Arrest	Multi-2	1412-14756
Item No.	QU AN	ARTICLE	SERIAL NO	BRAND
MODEL NO.		MISC DESCRIPTION (EG. COLOR, SIZE, INSCRIPTIONS, CALIBER, REVOLVER, ETC)	DOLLAR VALUE	

STATEMENTS:

Ofcr Pedroza admonished Defendant Thompson per LAPD form 03.11.20. Defendant Thompson did not respond. Ofcr Pedroza admonished Defendant Stephen per LAPD form 03.11.20. Defendant Stephen did not respond.

INJURIES/MEDICAL:

Defendant Stephen was treated for pre-existing medical conditions at 77th dispensary, and was cleared to book.

PHOTOGRAPHS, RECORDINGS, VIDEOS DICV AND DIGITAL IMAGING:
Detective II White took a digital photograph of Defendant Thompson and Defendant Stephen.

EVIDENCE:
I received Item #1. Ofcr Martin recovered Item #2 and Item #4. Detective II White recovered Item #3. Detective II Kanchanamongkol recovered Item #5 and Item #6

ADDITIONAL:
None

STRIP SEARCH:
Both defendants were strip searched at 77th Jail with negative results.

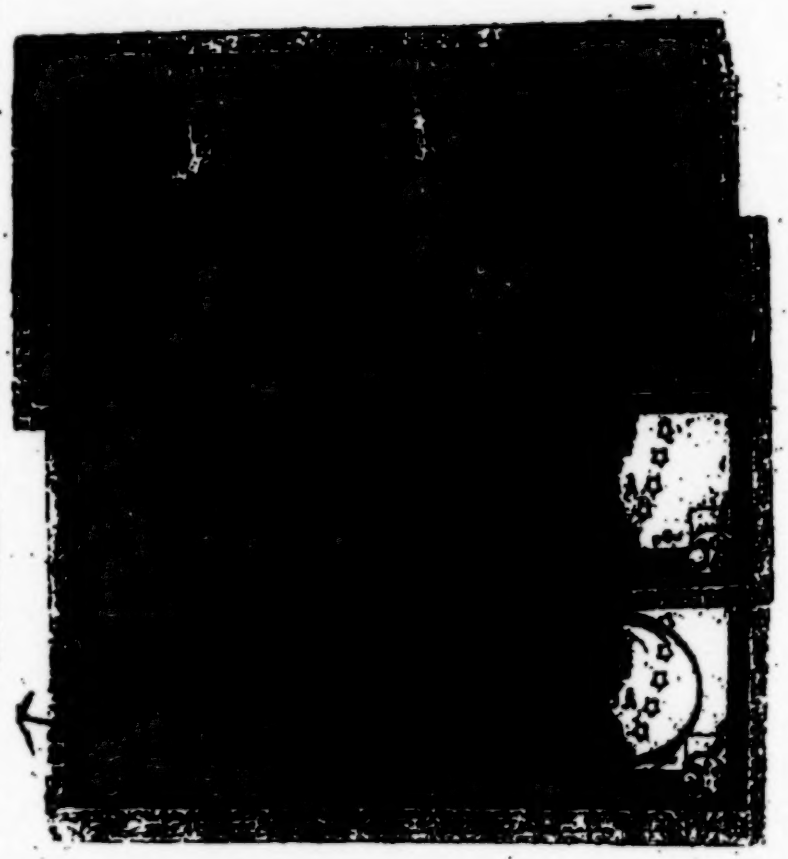
COURT INFORMATION:
Detective II Kanchanamongkol 30239, Detective II White, Officer Mims #40112, Officer Lopez #39711, Officer Lara #38454, Ofcr Martin #37191, Ofcr Marquez #38954, Officer Pedroza #27626, and I can testify to the statements made in this report.

CONTINUATION SHEET

Los Angeles Police Department

Page No. 5/12		Type of Report Arrest	Booking No. Multi-2	DR No. 1412-14756
Item No.	QUAN	ARTICLE	SERIAL NO	BRAND
MODEL NO.		MISC DESCRIPTION (EG. COLOR, SIZE, INSCRIPTIONS, CALIBER, REVOLVER, ETC)	DOLLAR VALUE	

CIRCLED MONEY BILL RECOVERED BY MARTIN # 37191
FROM DEF THOMPSON'S LFT FRNT PANTS PKT
VERIFIED BY PEDROCA # 27612



Pre-recorded currency used in a Narcotics Buy Bust Operation.

Officer	Serial #	Date	Time	Division
Bowen	38179	6/19/14	1400	7TH

Signature

Property Report

[Fold-Out Exhibit, see next page]

Los Angeles Police Department
PROPERTY REPORT

IF EVIDENCE CONT., COMPLETE SHADED AREAS ONLY. IF NOT EVID. CONT., COMPLETE ENTIRE FORM

DATE AND TIME OF THIS REPORT	DATE PROPERTY BKD.	IF RELATED TO PREVIOUSLY BOOKED EVIDENCE, ORIG. EVID. BKD. TO (IN THIS CASE COMPLETE ENTIRE REPORT)	DATE ORIG. EVID. TAKEN INTO CUSTODY
RESIDENCE ADDRESS			CHARGE BKD. OR BKG. #
RESIDENCE ADDRESS (BUS. ADDRESS IF VICT. IS BUSINESS)			R - X B -
RESIDENCE ADDRESS		☐ OWNER OR IF UNKNOWN ☐ FINDER/POSSESSOR	R - B -
AREA OR CITY, & DATE CRIME OCCUR.	TYPE OF PREMISES	DEPT. EMPLOYEE IF BOOKED TO SERIAL NO. DIVISION	IF FIREARM, CRT CHECKS: AFS YES ☐ NO ☐ NCIC YES ☐ NO ☐
IS THIS STOLEN PROPERTY? ☐ YES ☐ NO	PROBABLE CRIME	17:10 5501 S Western Ave	RD, OR CITY IF OUTSIDE
IS THIS FOUND PROPERTY? ☐ YES ☐ NO	DATE & TIME FOUND PROPERTY DISCOVERED	LOCATION DISCOVERED	RD, OR CITY IF OUTSIDE
INVESTIGATIVE UNIT		NOTIFICATIONS - PERSONS & UNITS	CONNECTING REPORTS - TYPE & DR

Use of Evidence Continuation: Use only with Arrest Report or, if no Arrest Report, with PIR. Do not use if evidence is related to previously booked evidence. To book evidence, staple this page on top of Arrest Face Sheet (or PIR Face Sheet, if no arrest) and forward with evidence.

ITEM NO.	QUANT.	ARTICLE			

The following items were recovered during a buy bust operation.

1	2	Rock Cocaine		.81gg	clear plastic bindle containing off-white rock-like substance resembling rock cocaine
2	1	Rock Cocaine		.83gg	clear plastic bindle containing off-white rock-like substance resembling rock cocaine
3	1	Marijuana		11.68gg	clear pill bottle containing green leafy substance resembling marijuana
4	1	Pipe		6.27gg	clear glass pipe w/ broken end containing wire mesh and burnt residue resembling burnt rock cocaine
5	1	Currency		US	(3)x$50, (2)x$20, (4)x$20, (40)x$1 = Total $140.00
6	1	ID	B9070524	California	ID card in name of Stephen, Kurtis Horace

Preliminary Drug Test	SUPERVISOR/INVESTIGATING OFFICER TESTING	SERIAL NO.	WITNESSING OFFICER	SERIAL NO.
Search Warrant Info	DATE	ISSUED BY JUDGE		COURT NO.
SUPERVISOR APPROVING: S Ramirez	SERIAL NO. 30121	10.10.00 ISSUED? YES ☑ NO ☐	Boykin 38978 GND DETAIL BT	PERSON REPORTING (SIGNATURE)
DATE & TIME REPRODUCED	DIVISION	CLERK		

☐ CHECKS, CREDIT CARDS, ETC. (CCD, PLUS DVD)
☐ FORGERY/ALA DETAILS/ADDR DETS., IF THEIR DOCUMENT
☑ NARCOTICS (GND)
☐ FIREARM (CITY & R.R.), CHEMICALS, ETC. (CITY)
EXIT COPY

10.01.00 (03/12) INC# 140619003791

Page 7 of 12

LOS ANGELES POLICE DEPARTMENT

RECEIPT FOR PROPERTY TAKEN INTO CUSTODY

SAVE THIS RECEIPT

DATE	TIME	DR NUMBER
6/19/14	1710	14-1214756

☐ ADDRESS ☒ LOCATION PROPERTY TAKEN INTO CUSTODY

1742 55TH ST.

NAME OF PERSON IN POSSESSION OF PROPERTY (LAST, FIRST, MI)

THOMPSON, LAURA

ADDRESS	STREET	CITY	ZIP
1942	TRANSIENT	L.A.	

BOOKING NUMBER	CAL DL, OR OTHER ID NO.
4008582 CHARGE 11352H/S	

OTHER IDENTIFYING INFORMATION	ITEM NUMBERS ON PROPERTY REPORT
	2, 4

PROPERTY TAKEN - DESCRIPTION			GIVE EXACT AMOUNT OF CASH $5.00		
QUAN.	ARTICLE	SERIAL NO.	BRAND	MODEL NO.	MISC., COLOR, SIZE, INSCRIPTION, CALIBER, ETC.
3	NARCO				OFF WHT SOLIDS RESEMBLING ROCK COCAINE
1	U.S. CURRENCY				5^{00} BUY MONEY RETURNED TO UIC
1	PIPE				GLASS COCAINE PIPE

PROPERTY BOOKED TO - SAME AS POSSESSOR ☒			DIVISION OF BOOKING GND
SIGNATURE OF OFFICER ISSUING /s/	SERIAL NUMBER 27680	DIVISION GND	DETAIL BT
THIS RECEIPT DOES NOT CONSTITUTE RECOGNITION OF LEGAL TITLE TO ABOVE PROPERTY			
SIGNATURE OF PERSON IN POSSESSION OF PROPERTY (OPTIONAL)			

10.10.00 (10/13)

PROPERTY RELEASE (COMPLETE NEXT PAGE)

8/12

FOR INFORMATION REGARDING PROPERTY RELEASE, CONTACT THE DETECTIVE DIVISION INDICATED BY AN "X" BELOW, BETWEEN THE HOURS OF 7:30 A.M. AND 3:30 P.M., MONDAY THROUGH FRIDAY.

Contact information for LAPD Detective Divisions is also available at www.lapdonline.org or by calling (877) ASK-LAPD.

If your address changes or you have no permanent address, it is your responsibility to contact the

appropriate detective Area after case adjudication (i.e., case rejected, sentenced to county jail or state prison, placed on parole or probation). Please be advised that if property taken into custody, which may lawfully be released, is not claimed within 90 days after the case has been adjudicated, the property Is subject to disposal.

DETECTIVE DIVISIONS	PHONE NOS.	TDD NOS.
☐ CENTRAL - 251 EAST 6th STREET, LOS ANGELES 90014	(213) 972-1200	(213) 485-9819
☐ DEVONSHIRE - 10250 ETIWANDA AVENUE, NORTHRIDGE 91325	(818) 832-0609	(818) 832-0665
☐ FOOTHILL - 12760 OSBORNE STREET, PACOIMA 91331	(818) 834-3115	(818) 756-8861

☐ HARBOR - 2175 JOHN S. GIBSON BLVD., SAN PEDRO 90732	(310) 726-7900	(310) 726-7706
☐ HOLLENBECK 2111 EAST 1st STREET, LOS ANGELES 90033	(323) 342-8900	(323) 224-0125
☐ HOLLYWOOD - 1358 NORTH WILCOX AVENUE, LOS ANGELES 90028	(213) 972-2967	(213) 485-9899
☐ MISSION 11121 NORTH SEPULVEDA BLVD., MISSION HILLS 91345	(818) 838-9810	(818) 837-9858
☐ NEWTON 3400 SOUTH CENTRAL AVENUE, LOS ANGELES 90011	(323) 846-5363	(323) 845-6535

☐ NO. HOLLYWOOD - 11640 BURBANK BLVD., NORTH HOLLYWOOD 91601	(818) 623-4045	(818) 756-9035
☐ NORTHEAST - 3353 SAN FERNANDO ROAD, LOS ANGELES 90065	(323) 344-5702	(213) 485-6407
☐ OLYMPIC - 1130 SOUTH VERMONT AVENUE, LOS ANGELES 90006	(213) 382-9380	(213) 382-4385
☐ PACIFIC 12312 CULVER BLVD., LOS ANGELES 90066	(310) 482-6313	(310) 482-6419
☐ RAMPART - 1401 WEST 6th STREET, LOS ANGELES 90017	(213) 484-3450	(213) 484-3664

☐ 77TH STREET - 7600 SOUTH BROADWAY, LOS ANGELES 90003	(213) 485-4175	(213) 485-6409
☐ SOUTHEAST - 145 WEST 108th STREET, LOS ANGELES 90061	(213) 972-7813	(213) 485-9934
☐ SOUTHWEST 1546 WEST MARTIN LUTHER KING BLVD., LOS ANGELES 90062	(213) 485-6570	(213) 485-1015
☐ TOPANGA 21501 SCHOENBORN STREET, CANOGA PARK 91304	(818) 756-4820	(818) 756-5899
☐ VAN NUYS - 6240 SYLMAR AVENUE, VAN NUYS 91401	(818) 374-0040	(818) 785-6619

☐	WEST LOS ANGELES - 1663 BUTLER AVENUE, WEST LOS ANGELES 90025	(310) 444-1580	(866) 924-4206
☐	WEST VALLEY 19020 VANOWEN STREET, RESEDA 91335	(818) 374-7730	(818) 705-1566
☐	WILSHIRE 4861 VENICE BLVD., LOS ANGELES 90019	(213) 922-8205	(213) 485-2112

NARCOTICS

☐	VALLEY AREAS: VALLEY BUREAU FILING UNIT - 6240 SYLMAR AVENUE, VAN NUYS 91401 (Devonshire, Foothill, Mission, North Hollywood, Topanga, Van Nuys, West Valley)	(818) 374-0095	(818) 785-6619
☒	ALL OTHER AREAS: NARCOTICS DIVISION FILING UNIT - 251 EAST 6TH STREET, LOS ANGELES 90014	(213) 833-3710	(877) 275-5273

OTHER

☐ _____ _____ _____

INSTRUCTIONS FOR COMPLETION

Evidence Taken From Arrestees: An employee seizing or taking custody of property must issue a Receipt for Property Taken into Custody, Form 10.10.00 (duplicate

copy) to the person relieved or the property (Manual Section 4/645.20 and Section 10.10.00, accessible within the "Form Use" link, on LAPD E-Forms on the Department's LAN), Penal Code Sections 1412 and 4003. Any information that could be used for the crime or identity theft must be redacted. The original Form 10.10.00 must be included as a page of the original Property Report, Form 10.01.00; Release from Custody (RFC) Report Continuation. Form 05.02.08; or Arrest Report, Form 05.02.00, when evidence is listed.

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NOTE: Penal Code Section 18265 provides that firearms seized at the scene of a domestic dispute shall be available to the owner or possessor in no less than 48 hours, but no longer than 5 days after the seizure, if the firearm is not retained as evidence related to criminal charges or is illegally possessed.

Page 9 of 12

LOS ANGELES POLICE DEPARTMENT

RECEIPT FOR PROPERTY TAKEN INTO CUSTODY

SAVE THIS RECEIPT

DATE	TIME	DR NUMBER
6/19/14	1710	141214756

☐ ADDRESS ☒ LOCATION PROPERTY TAKEN INTO CUSTODY

5501 WESTERN AVE. # 215

NAME OF PERSON IN POSSESSION OF PROPERTY (LAST, FIRST, MI)

STEPHEN, KURTIS

ADDRESS	STREET	CITY	ZIP
1707	W. 57TH ST.	L.A.	90062

BOOKING NUMBER	CAL DL. OR OTHER ID NO.
4008532 CHARGE 1F2PC/11352H/S	

OTHER IDENTIFYING INFORMATION	ITEM NUMBERS ON PROPERTY REPORT
	3, 5, 6

PROPERTY TAKEN-DESCRIPTION			GIVE EXACT AMOUNT OF CASH $140.00		
QUAN.	ARTICLE	SERIAL NO.	BRAND	MODEL NO.	MISC., COLOR, SIZE, INSCRIPTION, CALIBER, ETC.
1	U.S. CURRENCY				$140.00 IN MISC BILLS
1	CAL-ID	B907054			IN DEFT'S NAME (STEPHEN)
1	MARIJUANA				GRN PLANT MATERIAL RESEMBLING MARIJUANA IN PLASTIC BOTTLE

PROPERTY BOOKED TO- SAME AS POSSESSOR ☒ THOMPSON, LAURA			DIVISION OF BOOKING GND
SIGNATURE OF OFFICER ISSUING /s/	SERIAL NUMBER 27680	DIVISION GND	DETAIL BT
THIS RECEIPT DOES NOT CONSTITUTE RECOGNITION OF LEGAL TITLE TO ABOVE PROPERTY			
SIGNATURE OF PERSON IN POSSESSION OF PROPERTY (OPTIONAL)			

10/12

FOR INFORMATION REGARDING PROPERTY RELEASE, CONTACT THE DETECTIVE DIVISION INDICATED BY AN "X" BELOW, BETWEEN THE HOURS OF 7:30A.M. AND 3:30P.M., MONDAY THROUGH FRIDAY.

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☐ WEST LOS ANGELES - 1663 BUTLER AVENUE, WEST LOS ANGELES 90025	(310) 444-1580	(866) 924-4206

▢ WEST VALLEY 19020 VANOWEN STREET, RESEDA 91335	(818) 374-7730	(818) 705-1566
▢ WILSHIRE 4861 VENICE BLVD., LOS ANGELES 90019	(213) 922-8205	(213) 485-2112

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▢ VALLEY AREAS: VALLEY BUREAU FILING UNIT 6240 SYLMAR AVENUE, VAN NUYS 91401 (Devonshire, Foothill, Mission, North Hollywood, Topanga, Van Nuys, West Valley)	(818) 374-0095	(818) 785-6619

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OTHER

☐ _____ _____ _____

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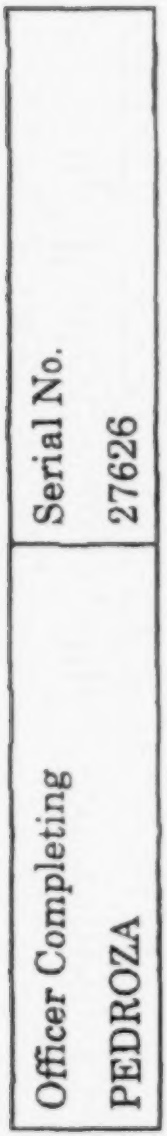
Department's LAN). State law provides that title to found property may vest in the finder if the owner does not come forward within 90 days after receipt by the police department, Civil Code Section 2080.3. If no claim is made by the owner or a finder within 97 days after booking, found property will be disposed of.

NOTE: Penal Code Section 18265 provides that firearms seized at the scene of a domestic dispute shall be available to the owner or possessor in no less than 48 hours, but no longer than 5 days after the seizure, if the firearm is not retained as evidence related to criminal charges or is illegally possessed.

STATEMENT FORM

Tape No.	
Witness No.	DR NO. 1412-14756

Name THOMPSON, LAURA					Date/ Time of Interview 6/19/14, 1910		Location of Interview 77TH STATION	
Residence Address 1942 TRANSIENT	City LOS ANGELES			Zip Code NONE	Phone			
Business Address UNEMPLOYED	City			Zip Code	Phone			
Sex F	Descent B	Hair BLK	Eyes BRO	Height 5'10	Weight 110	DOB 3/24/67		
Age 46	Driver Lic. No./Other ID [Illegible]					State		
Interviewing Officer(s) PEDROZA				Serial No.(s) 27626		Division GND		



MIRANDA ADMONITION

1. You have the right to remain silent.
   Do you understand? NO ANSWER

2. Anything you say may be used against you.
   Do you understand? _____

3. You have the right to the presence of an attorney before and during any questioning.
   Do you understand? _____

4. If you cannot afford an attorney, one will be appointed for you, free of charge, before any questioning if you want.
   Do you understand? _____

If a waiver is desired:

Do you want to talk about what happened?
_____

Statements: Use third person. Include who, what, where, when, why and how.

NO STATEMENT

STATEMENT FORM

Tape No.	
Witness No.	DR NO. 1412-14756

Name STEPHEN, KURTIS						Date/ Time of Interview 6/19/14, 1845	Location of Interview 77TH STATION
Residence Address 5501 S. WESTERN AVE. #415		City LOS ANGELES			Zip Code	Phone (323) 245-6125	
Business Address JANITOR (UNEMPLOYED)		City			Zip Code	Phone	
Sex M	Descent B	Hair BLK	Eyes BRO	Height 6'1	Weight 350		DOB 5/3/87
Age 27		Driver Lic. No./Other ID B9070524					State CA

Interviewing Officer(s)	Serial No.(s)	Division
PEDROZA	27626	GND
Officer Completing	Serial No.	
PEDROZA	27626	

MIRANDA ADMONITION

1. You have the right to remain silent.
   Do you understand? YES

2. Anything you say may be used against you in court.
   Do you understand? YES

3. You have the right to the presence of an attorney before and during any questioning.
   Do you understand? YES SIR

4. If you cannot afford an attorney, one will be appointed for you, free of charge, before any questioning if you want.
   Do you understand? YEA

If a waiver is desired:

Do you want to talk about what happened? "I DIDNT DO NOTHING, THAT CRACKHEAD WALKED INTO MY ROOM."

Statements: Use third person. Include who, what, where, when, why and how.

NO OTHER STATEMENT

eFile ID: 146133

SUPERIOR COURT OF CALIFORNIA COUNTY OF LOS ANGELES		
PROBABLE CAUSE DETERMINATION (DECLARATION)		
PCD Type: Adult	Courthouse: Foltz CJC	Location Booked: 77th Jail
Booking No: 4008582	Arrest File No: 141214756	Identifiers (CII, Jain, PDJ):
Arrestee/Suspect (Last, First, Middle): Thompson, Laura		DOB: 03/24/1967
Arrestee/Suspect's Residential Address: 1942 Transient Los Angeles	Location of Occurrence: 5501 S Western Ave	
Booking Charge(s): 182/11352 H&S	☒ Felony ☐ Misdemeanor ☐ Infraction	Supplemental Holds/ Warrants Charge:

Date/Time of Arrest:		Expiration Date and Time:	
06/19/2014 5:10 PM		06/21/2014 5:10 PM	
Arresting Agency/Division:		Arresting Officer(s):	Employee No(s):
Los Angeles Police Department/GND		Boykin Ryan	38979
Supervisor Approving:	Employee No:	Date/Time:	Contact Phone No:
MOSSMAN, THOMAS	39656	06/19/2014 10:50 PM	2134860834

Facts establishing elements of offense(s)/ violation(s). Information identifying/connecting arrestee/suspect by name with the violation(s) listed:

While operating in an undercover capacity during a buy/bust operation, Ofcr Boykin purchased Rock Cocaine from Deft Thompson who conspired with Deft Stephen (bkg # 4008532).

☐ **See Attached reports incorporated herein by reference.**

I declare under penalty of perjury that the foregoing is true and correct to the best of my knowledge and belief.

Executed on 06/19/2014 (Date) 10:48 PM (Time)
in the County of Los Angeles, California.

/s/ JAY MIMS	JAY MIMS	40112
(Signature)	(Print Name)	(Employee No.)

Telephonic Determination ONLY

On _____, I was placed under oath and read the contents of the foregoing, including the contents of any attached reports or declaration, verbatim to the Honorable _____. The Judicial Officer advised me that there (□) IS (□) IS NOT probable cause to believe this arrestee has committed a crime.
I declare under penalty of perjury that the foregoing is true and correct. Executed in Los Angeles County, California on

_____
(Date)

_____ _____
(Signature) (Employee No.)

Probable Cause Determination

On the basis of either reports reviewed and/or officer's declaration I hereby determine that there
(□) IS (□) IS NOT probable cause to believe this arrestee has committed a crime.

_____ _____
(Judical Officer's Signature) (Date)

_____
(Time)

eFile ID: 146135

SUPERIOR COURT OF CALIFORNIA COUNTY OF LOS ANGELES		
PROBABLE CAUSE DETERMINATION (DECLARATION)		
PCD Type: Adult	Courthouse: Foltz CJC	Location Booked: 77th Jail
Booking No: 4008532	Arrest File No: 141214756	Identifiers (CII, Jain, PDJ):
Arrestee/Suspect (Last, First, Middle): Stephen, Kurtis, Horace		DOB: 05/03/1987
Arrestee/Suspect's Residential Address: 5501 S Western Ave #415	Location of Occurrence: 5501 S Western Ave	
Booking Charge(s): 182/11352 H&S	☒ Felony ☐ Misdemeanor ☐ Infraction	Supplemental Holds/ Warrants Charge:

<table>
<tr><td colspan="2">Date/Time of Arrest:

06/19/2014 05:10 PM</td><td colspan="2">Expiration Date and Time:

06/21/2014 05:10 PM</td></tr>
<tr><td colspan="2">Arresting Agency/Division:

Los Angeles Police Department/GND</td><td>Arresting Officer(s):

Boykin Ryan</td><td>Employee No(s):

38979</td></tr>
<tr><td>Supervisor Approving:

MOSSMAN, THOMAS</td><td>Employee No:

39656</td><td>Date/Time:

06/19/2014

10:50 PM</td><td>Contact Phone No:

2134860834</td></tr>
<tr><td colspan="4">Facts establishing elements of offense(s)/ violation(s). Information identifying/connecting arrestee/suspect by name with the violation(s) listed:

While operating in an undercover capacity during a buy/bust operation, Ofcr Boykin purchased Rock Cocaine from Deft Stephen who conspired with Deft Thompson (bkg # 4008582).</td></tr>
<tr><td colspan="4">☐ See Attached reports incorporated herein by reference.</td></tr>
<tr><td colspan="4">I declare under penalty of perjury that the foregoing is true and correct to the best of my knowledge and belief.</td></tr>
</table>

Executed on 06/19/2014 (Date) 10:47 PM (Time)

in the County of Los Angeles, California.

/s/ JAY MIMS	JAY MIMS	40112
(Signature)	(Print Name)	(Employee No.)

Telephonic Determination ONLY

On _____, I was placed under oath and read the contents of the foregoing, including the contents of any attached reports or declaration, verbatim to the Honorable _____. The Judicial Officer advised me that there (□) IS (□) IS NOT probable cause to believe this arrestee has committed a crime.
I declare under penalty of perjury that the foregoing is true and correct. Executed in Los Angeles County, California on

_____
(Date)

_____ _____
(Signature) (Employee No.)

Probable Cause Determination

On the basis of either reports reviewed and/or officer's declaration I hereby determine that there
(□) IS (□) IS NOT probable cause to believe this arrestee has committed a crime.

_____ _____
(Judical Officer's Signature) (Date)

_____
(Time)

CITY ATTORNEY DISCLOSURE STATEMENT

OFFICERS-FORM TO BE COMPLETED ON ALL FELONY AND MISDEMEANOR ARRESTEES

DETECTIVES-FORM TO BE FILED WITH CITY ATTORNEY ONLY

Answer all questions to the best of your personal knowledge.

Type of Report	Booking No.	DR No.
Arrest Multi-2	Multi 2	14-12-14756

1. Reports: To your knowledge, what reports (except personnel investigations) were prepared in relation to this investigation?

   ☒ Arrest ☒ Crime ☒ Property ☒ PCD ☐ Follow-up ☐ Vehicle ☐ CHP 555 ☐ DMB-DS367
   Other: _____

2. The following items exist:
   Photographs (include C#)_____
   Video Tape (including DICV and digitial imaging)_____
   Audio tape (including officer's personal tape)
   ☐ YES ☐ NO Other:_____

3. Has there been or is there a pending Use of Force Investigation? ☐ YES ☐ NO
   If YES, provide the name and serial number of supervisor conducting investigation.
   Name _____ Serial No. _____

4. List the NAME, ADDRESS, PHONE NUMBER and DATE OF BIRTH of all CIVILIAN WITNESSES not named in any report(s), whether interviewed or not.

Name	Address	Phone No.	DOB

5. List the NAME, SERIAL NUMBER, ASSIGNMENT and ROLE of all OFFICERS not named in the report(s) who were percipient witnesses or otherwise involved in this incident:

Officer Name	Serial No.	Assignment	Officer's Role

6. List the NAME, SERIAL NUMBER, DEPARTMENT/AGENCY and UNIT NUMBER of all FIRE DEPARTMENT and EMERGENCY MEDICAL PERSONNEL who responded to this incident, but were not named in any report(s):

Name	Serial No.	Department/ Agency	Unit No.

7. List any SUSPECT(S) STATEMENT(S) not included in any reports:

_____

_____

8. List any CIVILIAN WITNESS(ES) STATEMENT(S) not included in any report(s):

_____

_____

9. Are there any RETAINED OFFICER NOTES or DIAGRAMS not included in any report(s)?
□ YES □ NO

Officer Name	Serial No.	Assignment	Item

10. List any known facts not included in any report(s) that might be considered as favorable to the defense or damaging to the prosecution, or which might negatively reflect on the credibility of any prosecution witness:

_____

_____

All of the answers to the above questions are true to the best of my personal knowledge.

Signature	Serial No.	Div. Of Assignment	Role in Arrest	Date
/s/	38979	GND	IO	06/19/14

App. 221

Booking Approval

[Fold-Out Exhibit, see next two pages]

Los Angeles Police Department

BOOKING APPROVAL

SEE DISTRIBUTION AT BOTTOM FOR NUMBER OF COPIES REQUIRED	DATE & TIME OF ARREST 6/19/14 1710	TIME OF INSPECTION/INTERVIEW BY WATCH COMMANDER (LAPD MANUAL 4/216) 1718

ARRESTEE'S NAME (Last, First, Middle): THOMPSON, LAURA

ARRESTING OFFICER(S)	SERIAL NO (S)	DIVISION	DETAIL
MARTIN 37191	JEDLICK 38395	77TH	

ACTION ADVISED

- [X] Booking Charge: 11352 H/S COCAINE SALES (As appears on AJIS Charge Table)
- [ ] Additional charges
- [ ] Advise arrestee of immediate cash bailout right (if two or fewer warrants for parking offense or traffic infraction)
- [ ] Release without booking
- [ ] Phone call made
- [ ] Phone calls refused by arrestee

BASIC CHARGE $ 30,000.00

ADD'L CHARGES $

ENHANCEMENTS $ 25,000.00

TOTAL BAIL $ 55,000.00

1. EVIDENCE TO BE BOOKED 2. SUGGESTIONS FOR CONTENTS OF REPORTS 3. VISITATION RESTRICTION

12022.1 PC - NEW FELONY ARREST WHILE ON PROBATION $25,000.00

RESPONSIBLE INVEST. UNIT

PAROLE/PROBATION AGENT	PHONE NO.	TIME TELEPHONIC HOLD PLACED

REASON FOR SEARCH:

- [X] Offense involves a controlled substance
- [ ] Articulable and reasonable suspicion that the arrestee is concealing contraband or weapons, regardless of the offense. (Explain reasonable suspicion)

TYPE OF SEARCH AUTHORIZED

- [X] STRIP
- [ ] PHYSICAL BODY CAVITY*
- [X] VISUAL BODY CAVITY *Note: Search warrant required WARRANT NO.

OBTAIN THIS AUTHORIZATION PRIOR TO SEARCH

WATCH COMMANDER APPROVING SEARCH (signature) SERIAL NO: S [signature] 25993

DATE & TIME OF SEARCH	LOCATION SEARCH CONDUCTED	SEARCHING EMPLOYEE	SERIAL NO.	DIVISION	SEX
6/19/14, 1745	77TH STATION	MARTIN	37191	77TH	F

RESULTS OF SEARCH (List items and locations removed from): NEGATIVE RESULT

ADVISING INVESTIGATIVE SUPERVISOR (signature) [signature] (KANE HANDAMAN GIGO) [ ] Telephonic Advice	SERIAL NO. 30239	DIVISION GND/BT	RAP SHEET REVIEWED? YES [ ] NO [ ]
WATCH COMMANDER APPROVING BOOKING (signature) [signature] KANGEL	SERIAL NO. 25993	DIVISION 77TH	RAP SHEET REVIEWED? YES [X] NO [ ]

MISDEMEANOR ARRESTS: Circle reason for booking below.

CONDITIONS FOR NON-ELIGIBILITY FOR RELEASE

1. The person arrested is so intoxicated that he or she could be a danger to himself or herself or others.
2. The person arrested requires medical examination or medical care or is otherwise unable to care for his or her own safety.
3. The person is arrested for one or more of the offenses listed in Section 40302 or 40303 of the Vehicle Code. (EXCEPTION - DUI ARRESTEES MAY BE RELEASED AFTER BOOKING, IF OTHERWISE ELIGIBLE.)
4. There are one or more outstanding felony arrest warrants for the person.
5. The person has one or more outstanding misdemeanor arrest warrants ineligible for release under Section 827.1 of the Penal Code (Manual Section 4/216.67).
6. The person cannot provide satisfactory evidence of personal identification.
7. The prosecution of the offense or offenses for which the person is arrested or the prosecution of any other offense or offenses would be jeopardized by immediate release of the person arrested.
8. There is a reasonable likelihood that the offense or offenses will continue or resume, or that the safety of persons or property will be imminently endangered by release of the person arrested.
9. The person arrested demands to be taken before a magistrate or refused to sign the notice to appear.
10. There is reason to believe that the person arrested would not appear at the time/place specified in the notice.

OFFICER MAKING O.R. DETERMINATION [ ] YES [ ] NO MISD. WARRANT NO. OR REASON NO.

(8.51.00 (11/19)) DISTRIBUTION: ORIGINAL - ATTACH TO THE ORIGINAL ARREST REPORT, OR TO DFAR IF NO ARREST REPORT OR BKG. COPY - 1 - ATTACH TO JAIL CUSTODY RECORD IF BOOKED; 1 - ATTACH TO DIV. COPY OF ARREST

OW

Los Angeles Police Department

BOOKING APPROVAL

SEE DISTRIBUTION AT BOTTOM FOR NUMBER OF COPIES REQUIRED	DATE & TIME OF ARREST 6/19/14, 1715	TIME OF INSPECTION/INTERVIEW BY WATCH COMMANDER (LAPD MANUAL 4/216) 1808

ARRESTEE'S NAME (Last, First, Middle): STEPHEN, KURTIS HORACE

ARRESTING OFFICER(S)	SERIAL NO (S)	DIVISION	DETAIL
TAFOYA 39069,	ZARATE 33956	GND	DT

ACTION ADVISED

☒ Booking Charge: 182PC/11352(A)HS - COCAINE SALES (As appears on AJIS Charge Table)

☐ Additional charges

☐ Advise arrestee of immediate cash bailout right (If two or fewer warrants for parking offense or traffic infraction)

☐ Release without booking ☐ Phone call made ☐ Phone calls refused by arrestee

BASIC CHARGE $ 30,000.00

ADD'L CHARGES $

ENHANCEMENTS $

TOTAL BAIL $ 30,000.00

1. EVIDENCE TO BE BOOKED 2. SUGGESTIONS FOR CONTENTS OF REPORTS 3. VISITATION RESTRICTION

RESPONSIBLE INVEST. UNIT

BKG# 4008532

PAROLE/PROBATION AGENT	PHONE NO	TIME TELEPHONIC HOLD PLACED

REASON FOR SEARCH

☒ Offense involves a controlled substance

☐ Articulable and reasonable suspicion that the arrestee is concealing contraband or weapons, regardless of the offense. (Explain reasonable suspicion)

TYPE OF SEARCH AUTHORIZED

☒ STRIP ☐ PHYSICAL BODY CAVITY*

☐ VISUAL BODY CAVITY *Note: Search warrant required. WARRANT NO.

OBTAIN THIS AUTHORIZATION PRIOR TO SEARCH

WATCH COMMANDER APPROVING SEARCH (signature) SERIAL NO: S. [signature] 25993

DATE & TIME OF SEARCH	LOCATION SEARCH CONDUCTED	SEARCHING EMPLOYEE	SERIAL NO	DIVISION	SEX
6/19/14, 1820	77TH STATION	TAFOYA	39069	77TH	M

RESULTS OF SEARCH (List items and locations removed from): NEGATIVE RESULTS

ADVISING INVESTIGATIVE SUPERVISOR (signature) ☐ Telephonic Advice	SERIAL NO	DIVISION	RAP SHEET REVIEWED?
[signature] # 32232	32232	GND	YES ☒ NO ☐
WATCH COMMANDER APPROVING BOOKING (signature) SGT RANGEL	SERIAL NO 25993	DIVISION 77TH	YES ☒ NO ☐

MISDEMEANOR ARRESTS: Circle reason for booking below

CONDITIONS FOR NON-ELIGIBILITY FOR RELEASE

1. The person arrested is so intoxicated that he or she could be a danger to himself or herself or others.
2. The person arrested requires medical examination or medical care or is otherwise unable to care for his or her own safety.
3. The person is arrested for one or more of the offenses listed in Section 40303 or 40305 of the Vehicle Code. (EXCEPTION - DUI ARRESTEES MAY BE RELEASED AFTER BOOKING, IF OTHERWISE ELIGIBLE.)
4. There are one or more outstanding felony arrest warrants for the person.
5. The person has one or more outstanding misdemeanor arrest warrants ineligible for release under Section 827.1 of the Penal Code (Manual Section 4/216.67).
6. The person cannot provide satisfactory evidence of personal identification.
7. The prosecution of the offense or offenses for which the person is arrested or the prosecution of any other offense or offenses would be jeopardized by immediate release of the person arrested.
8. There is a reasonable likelihood that the offense or offenses will continue to resume, or that the safety of persons or property will be imminently endangered by release of the person arrested.
9. The person arrested demands to be taken before a magistrate or refused to sign the notice to appear.
10. There is reason to believe that the person arrested would not appear at the time/place specified in the notice.

OFFICER MAKING O.R. DETERMINATION ☐ YES ☐ NO MISD. WARRANT NO. OR REASON NO.

(2.31.00 (1/99)) DISTRIBUTION: ORIGINAL - ATTACH TO THE ORIGINAL ARREST REPORT, OR TO DFAR IF NO ARREST REPORT OR BKG. COPY - 1 - ATTACH TO JAIL CUSTODY RECORD IF BOOKED. 1 - ATTACH TO DIV. COPY OF ARREST

Investigative Report

[Fold-Out Exhibit, see next page]

Page 1 of 3

Los Angeles Police Department
INVESTIGATIVE REPORT

COMBINED EVAL REPORT
MULTIPLE DRS ON THIS REPORT

REPORT DR: ROBBERY

ARREST DIV | AREA | CRIME ANALYSIS | DR #
77 | 14033206 | 1033 | 14-12-08857

CASE SCREENING FACTOR(S)
- SUSPECT/VEHICLE NOT SEEN
- PRINTS OR OTHER EVIDENCE NOT PRESENT
- OUTSIDE DISTRICT
- PROPERTY LOSS LESS THAN $5,000
- NO SERIOUS INJURY TO VICTIM
- ONLY ONE VICTIM INVOLVED

VICTIM
NAME: [redacted]
A 5501 WESTERN 90047
B
E-MAIL ADDRESS —
CELL PHONE 310-952-5224
DR. LIC. NO. (IF NONE, OTHER ID & NO.) —
FOREIGN LANGUAGE SPOKEN —
OCCUPATION UNEMPLOYED

PREMISES (SPECIFIC TYPE) STREET ☐ ATM

ENTRY (POINT OF ENTRY / POINT OF EXIT)
METHOD
SHOT AT/HIT/OBJECTS USED
VICT. VEH. (IF INVOLVED) YEAR, MAKE, TYPE, COLOR, LIC. NO.

LOCATION OF OCCURRENCE (SAME AS V3) ☐ N/A ☐ N/K
DATE & TIME OF OCCURRENCE: 3-22-14 0745
TYPE PROPERTY STOLEN / DAMAGED: CELLPHONE
MODIFICATIONS (PERSON & DIVISION)
R.D. 1217
ATTEMPT OBTAINED
DATE & TIME REPORTED TO PD: 3-22-14 0755
$ TOTAL(S) OBT: $300
$ RECOVERED: $ —
EST. DAMAGE/LOSS/VALUE: $ —
CONNECTED REPORT(S) (TYPE & DR #)

MO (IF UNKNOWN, LIST UNUSUAL ACTIONS) & DESCRIPTIONS (SUSPECT ACTIONS IN SHOOTINGS, INCLUDING WEAPON USED. DO NOT REPEAT ABOVE INFO NOT CLEARLY REPORT AS NECESSARY. IF ANY OF THE MISSING ITEMS ARE POTENTIALLY IDENTIFIABLE, ITEMIZE AND DESCRIBE ALL ITEMS MISSING IN THIS INCIDENT IN THE NARRATIVE.

SUSP EXITED VEH, SUSP CHASED VICT, SUSP PUNCHED VICT, SUSP TOOK VICT'S CELLPHONE, SUSP FLED UNK DIRECTION

MANDATORY REGISTRANT: ☐ ARSON ☐ CRIME/INCIDENT ☐ DOMESTIC VIOLENCE
CARD PROVIDED TO THE VICTIM: ☑ NOTIFICATION

REPORTING EMPLOYEE(S)
DETAIL, LAST NAME: JIMAN | SERIAL NO.: 36551 | DIV./DIST.: 77
PERSON REPORTING: A CARDENAS 35715 12AS
SIGNATURE: X
DR RECEIVED BY PHONE ☐
NOTE: IF BODY FORM IS USED, DO NOT THE SAME ENTER THE INFORMATION IN INVOLVED PERSONS SECTION.

Complete below sections if any CASE SCREENING FACTOR(S) boxes are not checked.

SUBJ'S VEHICLE: YEAR UNK | MAKE | MODEL VAN | TYPE UNK | COLOR | STATE
DRIVER | LIC. NO. | STATE
VICT UNK

EJECTED: 1 DRIVER 2 PASSENGER 3 MOTORCYCLE RIDER 4 PASSENGER 5 OTHER 6 CUSTOM PART 7 UNK TOP
BODY: 1 DRIVER 2 PASSENGER 3 STEERING 4 OTHER 5 RIGHT 6 FRONT 7 REAR 8 LEFT
WINDOWS: 1 DRIVER 2 LEFT 3 CLOTHING 4 OTHER 5 RIGHT 6 FRONT 7 REAR 8 LEFT

S-1: SEX M | DESC B | HAIR BLK | EYES BRN | HEIGHT 5'6 | WEIGHT 170 | AGE 37 | CLOTHING BLK SHIRT, BLK PANTS, BLK SHOES
PERSONAL DESCRIBE (ARM/LEG, FEATURES, SCARS, TATTOOS, ETC.)
NAME, ADDRESS, DOB, IF KNOWN; NAME, BAG NO., CHARGE, IF ARRESTED.
WEAPON (FIREARM, KNIFE, BODY FORCE, BULLETS, BOMB, ETC. IF KNOWN OR SEEN; DESCRIBE FULLY.) BODILY FORCE

S-2: SEX | DESC | HAIR | EYES | HEIGHT | WEIGHT | AGE | CLOTHING
PERSONAL DESCRIBE (ARM/LEG, FEATURES, SCARS, TATTOOS, ETC.)
NAME, ADDRESS, DOB, IF KNOWN; NAME, BAG NO., CHARGE, IF ARRESTED.
WEAPON (FIREARM, THREATS, BODILY FORCE, BULLETS, BOMB, ETC. IF KNOWN OR SEEN; DESCRIBE FULLY.)

INVOLVED PERSON(S): W - WITNESS; S - PERSON ARTD.; S - PERSON BOOKED (FOR); O - PERSON SHOT/OTHERWISE HURT; P - PARENT; OP - CONTACT PERSON (CONCERNING VICTIM)

NAME	SEX	DESC	DOB	ADDRESS	CITY	ZIP	PHONE
DR. LIC. NO. (IF NONE, LIST OTHER ID & NO.)	FOREIGN LANGUAGE SPOKEN			B			
				E-MAIL ADDRESS			CELL PHONE
NAME	SEX	DESC	DOB	ADDRESS	CITY	ZIP	PHONE
DR. LIC. NO. (IF NONE, LIST OTHER ID & NO.)	FOREIGN LANGUAGE SPOKEN			B			
				E-MAIL ADDRESS			CELL PHONE
NAME	SEX	DESC	DOB	ADDRESS	CITY	ZIP	PHONE
DR. LIC. NO. (IF NONE, LIST OTHER ID & NO.)	FOREIGN LANGUAGE SPOKEN			B			
				E-MAIL ADDRESS			CELL PHONE

COMBINED EVID. SHT. | USE THIS SECTION IF USED PROPERTY REPORT IF NO GUN AND NO MORE THAN THREE TYPES OF EVIDENCE. | LOC. BOOK NO. | ALCOHOL SUSPECT ☐ Y ☐ N | Preliminary Drug Test | BOOKING OFFICE, TELEPHONE RECLD. NO. | NARRATIVE OFFICE | RECLD. NO.

ITEM	QUAN	ARTICLE	SERIAL NO/TYPE TEST OF BLOOD	BOOKING NO./ DRUG TEST RESULT	MISC.

DPU 12R 03 2014 1337

NARRATIVE: USE THE FOLLOWING HEADINGS TO DOCUMENT ALL INFORMATION REGARDING THE INVESTIGATION: ADDITIONAL PERSONS INVOLVED (expanded by level); SOURCE OF ACTIVITY; INVESTIGATION; ARREST; SUSPICIONS; TREATMENT; PHOTOS, RECORDINGS, VIDEOS, BOV AND BWTN, WITNESS; BOOKING, EVIDENCE, DAMAGE/INJURIES; ADDITIONAL; COLLISION SUMMARY; PROPERTY STOLEN/LOST/RECOVERED/DAMAGED; AND COURT INFORMATION. NOTE: ANY OF THESE HEADINGS MAY BE OMITTED IF NOT APPLICABLE. SEE FIELD NOTEBOOK DIVIDER - GENERAL REPORTING INSTRUCTIONS, FORM 15.02.00 AND FIELD NOTEBOOK DIVIDER - IR, FORM 15.80.01 FOR FURTHER INFO.

VICTIM NOTIFICATION (IF APPLICABLE):

IS ANY OF THE VICTIM'S PROPERTY SUBJECT TO LATENT PRINT OR DNA EXAMINATION? ☐ YES ☐ NO
IDENTIFICATION MADE BY?
IF YES, EXPLAIN IN NARRATIVE.

APPROVAL AND REVIEW
SUPERVISOR APPROVING | SERIAL NO. | DIVISION
DATE & TIME REVIEWED: MAR 22, 2014 1330
DETECTIVE SUPERVISOR REVIEWING | SERIAL NO. | CATEGORY

SECURITY SERVICES DIV | OTHER MAJOR CRIMES | SHOTS FIRED | USE OF FORCE | NARCOTICS | STOLEN - GHS | DISQUIT | FIREARMS STOLEN/LOST; STOLEN PROPERTY TT SUSPIC | CHILD ABUSE | JUVENILE DIV | EXTRA COPIES

CONTINUATION SHEET

Los Angeles Police Department

Page No.		Type of Report	Booking No.	DR No.
2/3		ROBBERY		08897 1412
Item No.	QU AN	ARTICLE	SERIAL NO.	BRAND
MODEL NO.		MISC DESCRIPTION (E.G. COLOR, SIZE, INSCRIPTIONS, CALIBER, REVOLVER, ETC.)	DOLLAR VALUE	

SOURCE OF ACTIVITY:
On 03/22/14 at approx. 0755 hours, my partner Officer A Cardenas #35789 and I Officer J Han #36591 were in full patrol uniform assigned in a marked b'k and wht police vehicle. Officers' were assigned 12A53 in 77th Division. Officers responded to a radio call for screaming woman at 5501 S Western Ave. Inc # 140322001083.

INVESTIGATION:
Upon arrival officers spoke with Victim stated on 03/22/14 at approx. 0745 hours, she was walking on Western Ave prostituting. A white van pulled up to victim, suspect got out of the van and started chasing

victim. Suspect punched victim twice and victim feel to the ground in the middle of the street. Suspect said, "Compton ducky Hood" "You told on my hommie". Suspect grabbed victim's cellphone from her hand. Suspect ran back to the van and fled unknown direction.

[redacted]

Officers' advised victim to notify cellphone carrier of the incident.

INJURIES/MEDICAL TREATMENT:
Officers' observed approx. 1/4 "laceration to victim's chin.

PHOTOGRAPHS/VIDEO/DICVS/RECORDING/ DIGITAL IMAGING:
None.

EVIDENCE:
None.

ADDITIONAL:
None.

CANVASSING:
Officers' canvassed the are. A citizen who wished not to be identified stated that victim came running out of the Bronco Motel chasing a male black possibly the suspectbut not sure.

COURT:
Offices'r can testify to statements on report.

CONTINUATION SHEET

Los Angeles Police Department

Page No.		Type of Report	Booking No.	DR No.
3/3		ROBBERY		08897 1412
Item No.	QUAN	ARTICLE	SERIAL NO.	BRAND
1	1	cellphone	N/A	Motorola
MODEL NO.		MISC DESCRIPTION (E.G. COLOR, SIZE, INSCRIPTIONS, CALIBER, REVOLVER, ETC.)	DOLLAR VALUE	
N/A		Blk 310-997-5222		300.00
			TOTAL	300.00

PROPERTY TAKEN:

App. 226

Investigative Report

[Fold-Out Exhibit, see next page]

Los Angeles Police Department
INVESTIGATIVE REPORT

☐ COMBINED EVID. REPORT
☐ MULTIPLE DRS ON THIS REPORT

05.01.00 (11/13)

CASE SCREENING FACTOR(S)

- ☐ SUSPECT/VEHICLE NOT SEEN
- ☐ PRINTS OR OTHER EVIDENCE NOT PRESENT
- ☐ MO NOT DISTINCT
- ☒ PROPERTY LOSS LESS THAN $5,000
- ☐ NO SERIOUS INJURY TO VICTIM
- ☒ ONLY ONE VICTIM INVOLVED

REPORT OF: MURDER 77TH 14-009

INVEST DIV: CGHD | INC #: 140403000985 | DR #: 14-1209633

VICTIM

LAST NAME, FIRST, MIDDLE (OR NAME OF SUBMISSION): Black, Ryan Lyle | SEX: M | DESC: BLK | HT: 601 | WT: 225 | AGE: 27 | DOB: 06/09/1986

ADDRESS: R - Care of I/O | ZIP | PHONE | X

E-MAIL ADDRESS | CELL PHONE

PREMISES (SPECIFIC TYPE) ☐ ATM: Sidewalk

DR. LIC. NO. (IF NONE, OTHER ID & NO.): D1914622 | FOREIGN LANGUAGE SPOKEN | OCCUPATION: Unemployed

ENTRY: ☐ FRONT ☐ REAR ☐ SIDE ☐ ROOF ☐ FLOOR ☐ OTHER | POINT OF EXIT | METHOD | INSTRUMENT/TOOL USED

LOCATION OF OCCURRENCE: 5581 South Western Avenue | SAME AS VIC ☐ REX. ☐ MUS | R.D.: 1313 | PRINTS BY PRES. DIV. ATTEMPT ☐ Y ☐ N | OBTAINED ☐ Y ☐ N

DATE & TIME OF OCCURRENCE: 04/03/2014 0800 | DATE & TIME REPORTED TO PD: 04/03/2014 0807

TYPE PROPERTY STOLEN/LOST/DAMAGED ☐ DS 04.00 DIVEN | STOLEN/LOST: $ | RECOVERED: $ | EST. DAMAGED AMOUNT/YARD: $

VICT'S VEH. (IF INVOLVED) YEAR, MAKE, TYPE, COLOR, LIC. NO. | NOTIFICATION(S) (PERSON & DIVISION): RACR, Coroner's Office | CONNECTED REPORT(S) (TYPE & DR #): CC# 2014-02376

MO: IF LONG FORM, LIST UNIQUE ACTIONS. IF SHORT FORM, DESCRIBE SUSPECT'S ACTIONS IN BRIEF PHRASES, INCLUDING WEAPON USED. DO NOT REPEAT ABOVE INFO BUT CLARIFY REPORT AS NECESSARY. IF ANY OF THE MISSING ITEMS ARE POTENTIALLY IDENTIFIABLE, ITEMIZE AND DESCRIBE ALL ITEMS MISSING IN THIS INCIDENT IN THE NARRATIVE

Suspect approached victim, produced handgun and shot him multiple times causing his death. Suspect fled on foot east across Western Avenue to an unknow location.

MANDATORY MARSY'S RIGHTS CARD PROVIDED TO THE VICTIM ☐ | HATE CRIME/INCIDENT ☐ | DOMESTIC VIOLENCE ☐

REPORTING EMPLOYEE(S): INITIALS, LAST NAME: L. Dunter | SERIAL NO: 33133 | DIV/DETAIL: CGHD 77th | PERSON REPORTING SIGNATURE | ON RECEIVED BY PHONE ☐

NOTE: IF SHORT FORM AND VICTIM/PR ARE NOT THE SAME, ENTER PR INFORMATION IN INVOLVED PERSONS SECTION

Complete below sections if any CASE SCREENING FACTOR(S) above are not checked

SUSP'S VEHICLE: YEAR 18/13 | MAKE: Dodge | MODEL: Charger | TYPE | INTERIOR COLOR: ☐ 1. SUNKEY SEATS ☐ 2. DAMAGED WINDOW

COLOR(S): Grey | VEH. LIC. NO. | STATE

EXTERIOR: ☐ 1. EXTERIOR WHEELS ☐ 2. EXTERIOR MIRROR ☐ 3. LEVEL ALTERED ☐ 4. SUSPENSION ☐ 5. EXTERIOR PAINT ☐ 6. SEATS FOR

BODY: ☐ 1. DAMAGE ☐ 2. MODIFIED ☐ 3. STICKER ☐ 4. LEFT ☐ 5. RIGHT ☐ 6. FRONT ☐ 7. REAR

WINDOWS: ☐ 1. DAMAGE ☐ 2. DIRT ☐ 3. CHEMICAL ☐ 4. LEFT ☐ 5. RIGHT ☐ 6. FRONT ☐ 7. REAR

S-1: SEX: M | DESC: Blk | HAIR | EYES | HEIGHT | WEIGHT | AGE | CLOTHING: Blue shirt, dark pants. No Further Description | NAME, ADDRESS, DOB, IF KNOWN NAME, SEQ. NO., CHARGE, IF ARRESTED

PERSONAL ODDITIES (UNUSUAL FEATURES, SCARS, TATTOOS, ETC.) | WEAPON (VERBAL THREATS, BODILY FORCE, SIMULATED GUN, ETC. IF KNIFE OR GUN DESCRIBE FULLY): Unknown type handgun

S-2: SEX | DESC | HAIR | EYES | HEIGHT | WEIGHT | AGE | CLOTHING | NAME, ADDRESS, DOB, IF KNOWN NAME, SEQ. NO., CHARGE, IF ARRESTED

PERSONAL ODDITIES (UNUSUAL FEATURES, SCARS, TATTOOS, ETC.) | WEAPON (VERBAL THREATS, BODILY FORCE, SIMULATED GUN, ETC. IF KNIFE OR GUN DESCRIBE FULLY)

INVOLVED PERSON(S): W - WITNESS, R - PERSON RPTG., S - PERSON SECURING (AIR), C - PERSON DISCOVERING (AIR), P - PARENT, CP - CONTACT PERSON (DOMESTIC VIOLENCE)

W: [redacted] | DOB | DR. LIC. NO. (IF NONE, LIST OTHER ID & NO.) | FOREIGN LANGUAGE SPOKEN: Spanish | ADDRESS: R - Care of I/O | CITY | ZIP | PHONE | E-MAIL ADDRESS | CELL PHONE

W: [redacted] | DOB | DR. LIC. NO. (IF NONE, LIST OTHER ID & NO.) | FOREIGN LANGUAGE SPOKEN | ADDRESS: R - Care of I/O | CITY | ZIP | PHONE | E-MAIL ADDRESS | CELL PHONE

NAME | SEX | DESC | DOB | DR. LIC. NO. (IF NONE, LIST OTHER ID & NO.) | FOREIGN LANGUAGE SPOKEN | ADDRESS: R - | CITY | ZIP | PHONE | E-MAIL ADDRESS | CELL PHONE

COMBINED EVID. RPT. | USE THIS SECTION IN LIEU OF PROPERTY REPORT IF NO GUN AND NO MORE THAN THREE ITEMS OF EVIDENCE | LOC. EVID. SKD: 77th | IS 10 BE DEVENT ☐ Y ☒ N | Preliminary Drug Test | SUPV/INV. OPCR. TESTING SERIAL NO. | WITNESS OPCR. SERIAL NO.

ITEM	SMAN	ARTICLE	SERIAL NO./TYPE TEST OF DRUG	BRAND/DRUG WEIGHT, UNITS	MODEL NO./DRUG TEST SERIES	MISC
	Sev	Property	Report			

0 9 5 APR 1 6 2014

NARRATIVE: USE THE FOLLOWING HEADINGS TO DOCUMENT ALL INFORMATION REGARDING THE INVESTIGATION. ADDITIONAL PERSONS INVOLVED (expanded by use), SOURCE OF ACTIVITY, INVESTIGATION, ARREST, SUSPENSION, TREATMENT, PHOTOS, RECORDING, VIDEOS, DOV AND DIGITAL SAMPLE, BOOKING, EVIDENCE, CARNAGING, ADDITIONAL COLLISION SUMMARY, PROPERTY STOLEN/LOST/RECOVERED/DAMAGED, AND COURT INFORMATION. NOTE: ANY OF THESE HEADINGS MAY BE OMITTED IF NOT APPLICABLE. USE FIELD NOTEBOOK DIVIDER - GENERAL REPORTING INSTRUCTIONS, FORM 15.20.00 AND FIELD NOTEBOOK DIVIDER - IR, FORM 15.20.01 FOR FURTHER INFO

VICTIM INFORMATION IF APPLICABLE | IS ANY OF THE VICTIM'S PROPERTY MARKED WITH AN OWNER APPLIED IDENTIFICATION NUMBER? IF YES, EXPLAIN IN NARRATIVE | YES ☐ NO ☐

APPROVAL AND REVIEW: [signature] | SERIAL NO: 32995 | DIVISION: CG/HD | DATE & TIME: 4-10-14 | CLERK: Stan | DIVISION: 96

DETECTIVE SUPERVISOR REVIEWING | SERIAL NO. | CATEGORY

SECURITY SERVICES DIV. | HYDRO MAJOR CRIMES | PHOTO FIRED | USE OF FORCE | RANGE/STOLEN/GUN | GND/GIT | FIREARM STOLEN/LOST - SEVS & SEA CRIMES PROPERTY TT SUPVR | CHILD ABUSE/JUVENILE DIV. | EXTRA COPIES

Murder Investigation Report Dr No. 1412- 09623

Crime Summary:

On Thursday, April 3, 2014, at 0800 hours, Victim, Ryan Lyle Black, a 27 year old male Black, was walking in the driveway at the Bronco Motel located at 5501 South Western Avenue, when the suspect walked up and shot him, striking him multiple times. The suspect then fled east on foot across Western Avenue to 55th Street.

Los Angeles Fire Department Rescue Ambulance No. 266, Paramedics J. Valezuela Serial No. 315791, and J. Franklin Serial No. 243991, responded to the scene and transported Black to California Hospital. Black failed to respond to emergency medical treatment and was pronounced dead at 0831 hours, by Doctor Henika.

Notification of Detectives:

Officer Lyman Doster, Serial No. 33132, was at the Bronco Motel located at 5501 South Western Avenue assisting with the crime scene when he was notified of Black's death. On Thursday, April 3, 2014, at approximately 0835 hours, Officer Doster notified Criminal Gang Homicide Division's 77th Squad Coordinator, Detective III C. Barling, Serial No. 25264, that a homicide occurred at 5501 South Western Avenue.

Crime Scene Investigation:

On Thursday, April 3, 2014, at 0825 hours, Officer Doster arrived at the crime scene. Once Doster was notified of Black's death he assumed investigative

responsibility. Detectives noted it to be day time hours with clear skies, and the ambient temperature to be 52 degrees Fahrenheit. The crime scene was located on the sidewalk in front of 5501 South Western Avenue.

Detectives were briefed by 77th Street Area Patrol unit 12A45, Officers R. Rafter, Serial No. 36058, and E. Coats, Serial No. 34785, who were the first responding officers. Upon arrival, Rafter and Coats observed Black in the driveway of the Bronco Motel lying supine with his head facing south and feet to the north suffering from multiple gunshot wounds.

Exterior Characteristics:

The crime scene was located on Western Avenue, which is a north-south street, between 56th Street and 54th Street, both east-west running streets, located within the City of Los Angeles. The crime scene was within a residential and business neighborhood consisting of multi-unit family dwellings and commercial businesses. Western A venue was cordoned off with yellow crime scene tape from 56th Street to 54th Street. While processing the crime scene, detectives observed and subsequently recovered (1) medium caliber fired bullet. Scientific Investigations Division Photographer Raives, Serial No. V9103, responded and photographed the scene at the direction of detectives and recorded it under D# 0379315

Characteristics of the Body:

Prior to the arrival of detectives, Black was transported by Los Angeles Fire Department Personnel to California Hospital. The following information was provided by first responding Officer Rafter. Rafter indicated that upon his arrival he observed Black lying

supine in the drive way of 5501 South Western Avenue with his head facing south suffering from multiple gunshot wounds.

Witnesses Statements:

On April 3, 2014, Officer Herrera, Serial No. 33988, and Detective Nemeroff, Serial No. 31769, were assigned to the 77th Gang Impact Team. They responded to the area of 5501 South Western Avenue to assist with the homicide investigation. Upon their arrival Communications Division broadcasts additional information and the location of a possible witness.

Nemeroff and Herrera met with [redacted] who stated that following. [redacted] stated that on April 3, 2014, at approximately 0805 hours, she was walking eastbound from Western Avenue on the north side of 55th Street. [redacted] was crossing to the south curb when she observed a car driving on 55th street eastbound from Western. [redacted] described the car as a newer model Dodge Charger that was grey in color. The car continued eastbound and quickly conducted a U-turn and was now driving westbound. [redacted] stopped in the street to allow the car to pass. The car then parked along the north curb a few houses east of the big tree (approximately 1739-1735 West 55th Street). [redacted] proceeded to cross the street to the south side of 55th Street and continued to her house. As [redacted] got to her front door she heard multiple gunshots that appeared to be coming from Western Avenue [redacted] over towards Western Ave. [redacted] observed the same Dodge Charger traveling at a high rate of speed westbound on 55th Street and make a right turn to northbound Western Avenue. [redacted] described the driver as a male, Black, with short hair, approximately 27 to 35 years of age,

wearing a grey sweatshirt with a white t-shirt underneath. [redacted] described the passenger and being a male, Black, skinny build.

[redacted] continued to state that when she ran to her front yard, she noticed that her neighbor was walking eastbound on 55th Street from Western Avenue. Her neighbor, who was walking with her young daughters, was visibly upset and crying. Due to their appearance, [redacted] her neighbors might have witnessed the shooting.

Detective Nemeroff and Herrera identified and interviewed [redacted] [redacted] stated that she was walking her daughters to school westbound 55th Street on the south side towards Western Avenue. As they approached Western Avenue, a shooting began in the driveway of the Bronco Motel at 5501 South Western Avenue. [redacted] observed a male black wearing a blue sweater shooting at another male victim who was standing in the driveway. The suspect shot five to six times and ran eastbound across Western Avenue. [redacted] grabbed her kids and huddled down behind the parked cars on the south side of the street. [redacted] stated that she observed the suspect running towards the north south alley that is just east of Western Avenue. At that time [redacted] lost sight of the suspect. [redacted] described the suspect as male, Black 20-25 years of age, thin build, wearing blue sweater and black pants.

App. 231

Investigative Report

[Fold-Out Exhibit, see next page]

Page 1 of 5

Los Angeles Police Department
INVESTIGATIVE REPORT

CASE SCREENING FACTOR(S)

REPORT OF: ATTEMPT MURDER

AREA/DIV: 77TH | DR NO: 1407502767 | CRIME CODE: 1421571

VICTIM

[redacted] | ADDRESS: 627 S SAN JULIAN ST LOS ANGELES | PHONE: (213) 488-9031

PREMISES: MOTEL ROOM

ENTRY | METHOD | INSTRUMENT/TOOL USED

VICT'S VEH

LOCATION OF OCCURRENCE: 5501 S WESTERN AV # 216

DATE & TIME OF OCCURRENCE: 07/02/14 - 07/04/14 0500 - 0700

DATE & TIME REPORTED TO PD: 07/05/14 1505

TYPE PROPERTY: ATM/DEBIT CARD,

NOTIFICATION (PERSON & DIVISION): SID PHOTOS, SEAMAN #N3170

MO: SUSP#2 MET VICT ON STREET AND COAXED HIM TO HIS MOTEL ROOM. WHILE IN ROOM, SUSP#1 AND SUSP#2 ASSAULTED VICT. SUSP#1 TOOK VICT'S PROPERTY. VICT WAS BOUND AND RESTRAINED BY SUSP 1 & 2. SUSP#1 USED VICT CARD PROVIDED TO THE VICTIM TO EMPTIED HIS BANK ACCOUNT. W/OUT THE [illegible] VICTIM'S CONSENT.

SUITE COMMERCIAL EVENT: ☒ | DOMESTIC VIOLENCE: ☐

REPORTING EMPLOYEE(S)

B. BOURGEOIS 40557 77TH

P. SANDATE 36567 A15 WZ

SUSP 1

M | B | BLK | BRO | 5'9" - 6'0" | 175 - 185 | VNK | "JAMES" NFI

PERSONAL DESCRIBED ABNORMAL FEATURES: LONG PONY TAIL (HAIR)

WEAPON: BODILY FORCE

SUSP 2

M | B | BLK | BRO | 6'3" | 160 - 170 | 20 - 25 | NFI

PERSONAL DESCRIBED ABNORMAL FEATURES: NONE OBSERVED

WEAPON: BODILY FORCE

NARRATIVE: USE THE FOLLOWING HEADINGS TO DOCUMENT ALL INFORMATION REGARDING THE INVESTIGATION: ADDITIONAL PERSONS INVOLVED [illegible] SOURCE OF ACTIVITY; INVESTIGATION; ARREST; SUSPICIOUS/ON "RELATIVES"; PHOTOS; RECORDINGS; VIEWS; DICV AND DIGITAL IMAGES; BOOKING; EVIDENCE; CANVASSING; AIR/PHONE; SCELLANEOUS; SUMMARY; PROPERTY; EXCLUSIONARY; AND COURT INFORMATION. NOTE: ANY OF THESE HEADINGS MAY BE OMITTED IF NOT APPLICABLE. SEE FIELD NOTEBOOK DIVIDER - [illegible] RECORDING INSTRUCTIONS; FORM 18.09.01 AND FIELD NOTEBOOK DIVIDER 09, FORM 18.09.01 FOR FURTHER INFO.

IS ANY OF THE VICTIMS PROPERTY MARKED WITH AN OWNER APPLIED IDENTIFICATION NUMBER? YES ☐ NO ☐

IF YES, EXPLAIN IN NARRATIVE

APPROVAL AND REVIEW

SUPERVISOR APPROVING: SGT VACH | SERIAL NO: 32011 | DIVISION: 77TH

DATE: 07/01 | CLOCK: 0901 hrs 12

DATE SUPERVISOR REVIEWING: OPD JUL 17 2014 | SERIAL NO:

CATEGORY:

CONTINUATION SHEET

Los Angeles Police Department

Page No.		Type of Report	Booking No.	DR No.
2		ATTEMPT MURDER		1412 15771
Item No.	QU AN	ARTICLE	SERIAL NO.	BRAND
MODEL NO.		MISC DESCRIPTION (E.G. COLOR, SIZE, INSCRIPTIONS, CALIBER, REVOLVER, ETC.)	DOLLAR VALUE	

SUSPECT-1: John Henry Miller "James"

SUSPECT-2: Antoine Miller

SUSPECT-3: "Nikki" nfi

VICTIM: [redacted]

SOURCE OF ACTIVITY:

On 07/05/14 at approximately 1310 hours, my partner Officer Sandate #36567, and I, Officer Bourgeois #40557 were dressed in full uniform driving a marked black and white police vehicle, assigned to 77th Division, unit 12A15 W2, when we received a radio call

for "ADW Investigation" at 555 E Hardy –Centinela Hospital, Inc #140705002767.

Comments of the call read as follows:
PREV INC140705002587, PATIENT [redacted] STABLE CONDITION (MUTE) IS NOW CONSCIOUS & ABLE TO COMMUNICATE W/OFCRS. CMNTS FROM PREV INC: ADW OCC AT BRONCO MOTEL 5501 S WESTERN AV (RD1213), SUSP 2 M/B BOUNDED VICT & PHYSICALLY ASSAULTED HIM, POSS SODOMY/SEXUAL ASSAULT INV. 12A69-W2 RESP TO HOSP & WAS UNABLE TO TAKE RPT DUE TO PATIENT BEING IN ALTERED MENTAL STATE & INJURIES TOO SEVERE TO COMMUNICATE,REQ STAFF TO C/B WHEN PATIENT WAS CONSCIOUS.

INVESTIGATION:

Upon arrival, Officers confirmed with Charge Nurse that Victim was mute. We immediately requested a sign language interpreter via Communications Division.

While awaiting our sign language interpreter's arrival, officers were informed by one of the nursing staff that a female with information regarding the incident was on hold on the phone at the nursing station. However, when the same nurse attempted to bring her back up on the line, she had been disconnected. Approximately 5 minutes later, officers heard the phone in Victim's room (room# 8115) ringing. I answered the phone and was greeted by a female voice on the other end. I identified myself as a Police Officer and she advised she was glad I was investigating the incident and that she had additional related

CONTINUATION SHEET

Los Angeles Police Department

Page No.		Type of Report	Booking No.	DR No.
3		ATTEMPT MURDER		1412 15771
Item No.	QU AN	ARTICLE	SERIAL NO.	BRAND
MODEL NO.		MISC DESCRIPTION (E.G. COLOR, SIZE, INSCRIPTIONS, CALIBER, REVOLVER, ETC.)	DOLLAR VALUE	

information. The female explained that she knew that Victim had been taken into room 216 of the Bronco Motel and tortured there. She explained that a male Black known to her as "Smiley" and his girlfriend "Nikki" had tied him up in the room and burned him with cigarettes. She had advised on the day the incident occurred, she heard screams she believed belonged to Victim coming from room 216. She further advised that "Smiley's" real name might be "John Henry" but she couldn't recall his last name. The female refused to provide me with her identity or contact information. She then hung up her end of the line.

With this new information, My partner contacted 77th Watch Commander Sgt Vera #25767 and officers Elenes #40468 and Moreno #38108 of unit 12A69 W-2 were dispatched to conduct a follow up at 5501 S Western Av to canvass for possible Suspects matching the name in the location described. (see attached continuation sheet for 12A69's statement.)

Brenda Terry RID# 33572 CICT responded to the hospital and provided my partner and I with sign language interpretation during our interview.

Victim stated that on 07/02/14 between approximately 0500 and 0600 hours he was walking in the area of 55th St and Western Av. He was approached by Suspect-3 "Nikki" She asked Victim if he remembered her. (Victim explained he could read lips) He replied yes. Suspect-3 asked Victim if he wanted to go back to her room. Victim agreed. Victim stated he was lead upstairs to the second floor landing of the Bronco Motel to a room in the corner (later identified as room #216).

Upon entry, Victim observed Suspect-1, whom he referred to as "James" and Suspect-2, whom he advised was "James'" nephew, already inside smoking crack. Victim was offered a crack pipe by Suspect-1 to which he accepted. Victim was then taken by surprise from behind by Suspect-2. Victim stated Suspect-2 wrapped one of his arms around Victim's neck and the other around the torso. Victim stated he was then lifted off the ground and repeatedly struck by Suspect-1 in the head, face, torso and legs. Victim stated he was punched and kicked. Victim, at one point during the barrage of strikes, recalls losing consciousness from being struck in the head. When Victim came to, Suspect's 1 and 2 were tying his wrists together with a

torn piece of bed sheet; palms facing each other. They then proceeded to tape his wrists excessively and so tightly that Victim described feeling as though his wrist bones were touching each other, causing severe pain. Victim stated his legs were also taped together, just below the knees and he was left lying on the floor of the room where Suspect-2 proceeded to kick him numerous

CONTINUATION SHEET

Los Angeles Police Department

Page No.		Type of Report	Booking No.	DR No.
4		ATTEMPT MURDER		1412 15771
Item No.	QU AN	ARTICLE	SERIAL NO.	BRAND
MODEL NO.		MISC DESCRIPTION (E.G. COLOR, SIZE, INSCRIPTIONS, CALIBER, REVOLVER, ETC.)	DOLLAR VALUE	

times in the head, torso and leg areas. Victim could not recall what kind of shoes Suspect-2 was wearing but partly remembered them possibly being boots. The kicks caused Victim severe amounts of additional pain. Victim repeatedly attempted to communicate with Suspects to stop striking him. Suspect-1 grabbed a chair from close by and asked Victim if he wanted to be struck with it. Victim shook his head no, in fear. Suspect stated, "Then shut up!"

Suspect-1 then reached into Victim's front left pocket and retrieved Victim's ATM card. Suspect-1 and Suspect-3 then left the location together, leaving Victim alone with Suspect-2. Victim stated that during

the time Suspects 1 and 3 were gone, Suspect-2 continued to strike and kick him intermittently.

Suspects 1 and 3 returned to the location some time later. During that time, Suspect-3 forcibly opened Victim's mouth and held it open. Suspect-2 then proceeded to pour a liquid that Victim initially thought was water into his mouth. He immediately realized it was actually bleach and attempted to turn his head away to avoid swallowing it. Suspect-3 continued to hold his mouth open and Suspect-2 continued to pour bleach into his mouth, forcing him to swallow the bleach. Victim stated it burned his throat and stomach from the inside.

Victim stated these events occurred over the course of the first day. He was not given any food or water and had not been allowed to go to the bathroom. Victim stated he had lost control of his bladder and urinated on himself. Victim stated that it burned as he did and when he looked down at the crotch area, he noticed it was red, and figured he was urinating blood.

On what Victim estimated was the following day (07/03/14), he stated Suspect-2 had fallen asleep and Suspect-3 was smoking crack. Suspect-1 went over to Victim and cut the tape from his arms and legs. Victim, utilizing his now free hands to resemble a person walking (using 2 fingers to walk across the palm of the other hand) requested Suspect-1 allow him to leave. Suspect-1 told him no, he could not leave. Victim feared that if he attempted to leave on his own, Suspects 1-3 would kill him. So Victim, in compliance, remained at location. At an unknown point during the day, Victim managed to communicate with Suspect-1 and asked about his ATM card. Suspect-1 told Victim had told

Victim he had taken all of his money and that the amount was $892. The Victim advised us that he looked around the room and he observed a large amount of rock cocaine that he believed was purchased using his money.

CONTINUATION SHEET

Los Angeles Police Department

Page No.		Type of Report	Booking No.	DR No.
5		ATTEMPT MURDER		1412 15771
Item No.	QU AN	ARTICLE	SERIAL NO.	BRAND
MODEL NO.		MISC DESCRIPTION (E.G. COLOR, SIZE, INSCRIPTIONS, CALIBER, REVOLVER, ETC.)	DOLLAR VALUE	

At some point later in the day, after an undetermined amount of time, Victim asked again if he could leave. This time Suspect-1 stated he could leave. Victim immediately fled the room, where he made contact with an unidentified female that he himself recognized. He, using body language, signaled to the female using one hand as a phone held to his ear and then drawing a cross on his shoulder in an attempt to ask her to call for help. Victim stated a short time later an ambulance arrived at the location and took him to the hospital.

INJURIES/ MT:

Victim was transported on 07/04/14 by an unknown LAFD R/A. He was treated at Centinela Hospital by Dr Atkinson and assigned Patient# M000139227.

Officers observed swelling to the left side of Victim's head as well as swelling and redness to the left eye. Officers also observed deep ligature marks on both wrists along with large raised blisters on both wrists. Victim's hands were also severely swollen, causing Victim a great amount of discomfort as well difficulty signing. Victim complained of severe pain to left ribcage area which hospital staff confirmed was due to a closed fracture to one of his ribs.

PHOTOGRAPHS:

SID Photographs responded to the hospital. LAPD Photographer Seaman #N3128 took numerous digital photographs of Victim and his injuries which were assigned D#0380428.

EVIDENCE:

At the time of officer's initial investigation, 77th and Southwest Detectives were authoring a search warrant for possible evidence. See Detective's case notes for results.

ADDITIONAL:

None.

COURT INFORMATION:

My partner and I can testify to the statements and information in this report.

APPENDIX J

post-gazette.com

Pittsburgh Post-Gazette

Local prostitution ring busted in national FBI crackdown on human trafficking, 'Operation Cross Country'

June 22, 2014 9:35AM

By Matt Nussbaum / Pittsburgh Post-Gazette

Federal agents and local detectives swarmed the third floor of Pittsburgh's Station Square Sheraton Hotel Friday night, making it the dramatic scene of law enforcement's nationwide war on human trafficking.

Nine women were arrested at the hotel as part of what appears to be an FBI-directed national crackdown on prostitution and human trafficking. Federal, state and local law enforcement officials coordinated to carry out the sting, part of a federal effort called Operation Cross Country.

While FBI officials said no details would be released before Monday, reports indicate that similar stings took place in Arizona, Arkansas, Louisiana, Ohio and Oklahoma between Wednesday and Friday. Whether all of these arrests were part of Operation Cross Country could not be confirmed.

Detectives with the Pittsburgh police vice unit began placing telephone calls Friday afternoon to numbers advertised in the escort section of the website

backpage.com, known as a site that human traffickers and pimps use to illicitly sell sex.

"It's an extraordinarily harmful website," said Lauren Hersh, a former Brooklyn prosecutor and now director of anti-trafficking policy and advocacy at Sanctuary for Families, a New York-based nonprofit. "I've seen countless young girls who have been exploited on the website."

Detectives set up all of the appointments at hotel rooms on the third floor of the Sheraton, according to court documents.

Between 3:30 and 11:30 p.m., the women, with advertised names such as "Paris" and "Natalia," arrived at the hotel to meet whom they thought to be clients. Upon arriving, each woman, or in some cases pairs of women, would place a call to the supposed client who told her the room number.

Upon arrival to the room, at least two of the women asked whether the male was a police officer. According to court documents, the woman calling herself Natalia, a 23 year-old from Pittsburgh, "did a cop check" on the officer and then said, "OK, I just want to make sure you're not a cop."

Undercover detectives agreed to a price, from $200 to $1,000, with the women and exchanged the money; usually it had to be placed on a bedside table or television, as the women refused to handle the money directly. The detectives then signaled for back-up, and detectives and agents swarmed the room. The FBI conducted interviews with several of the women, all but one of whom were later transported to Allegheny

County Jail. One was released, with a summons to be issued in days.

Of the nine arrested, eight were charged with prostitution. They ranged in age from 23 to 32. A ninth, Heather West, 38 of Pittsburgh, drove a 23-year-old to the hotel who was arrested on prostitution charges. Ms. West claimed only to be a driver and there for security purposes. She is facing misdemeanor conspiracy and promoting prostitution charges.

On Saturday, the day after the arrests, another almost 40 advertisements for adult "escorts" in the Pittsburgh area were posted on backpage.com. While the website says advertising of prostitution services is prohibited, numerous ads overtly offered such services and even listed prices. Backpage is one of several websites that law enforcement uses to monitor human trafficking, according to experts.

"Those websites actually create the biggest marketplace that we've ever seen in this country for victims of sex trafficking," said Andrea Powell, founder and executive director of FAIR Girls, a Washington, D.C.-based anti-trafficking organization.

"They're participating in this problem as well; they're not just a hapless platform," she said of the sites, adding that reports have shown Backpage and similar sites earning as much as $42 million a year from sex advertising.

"It looks virtual, it's online, but they're real victims," she said.

In July 2013, the FBI led a similar nationwide operation in 76 cities over the course of 72 hours. The

sting recovered 105 juveniles who were being sold for sex, and 152 pimps were arrested. Similarly, the operation took place over a weekend, and details were not released until Monday, when the success of the operation was touted.

The FBI's Pittsburgh division arrested two pimps in the 2013 operation and did not recover any juveniles.

Matt Nussbaum: mnussbaum@post-gazette.com, 412-263-1504 or on Twitter @MatthewNussbaum.

http://www.post-gazette.com/breaking/2014/06/22/Local-prostitution-ring-bustcd-in-nation...

8/18/2014 Breaking News - Pittsburgh Post-Gazette

JOINT APPENDIX

Supreme Court, U.S.
FILED
DEC 15 2014
OFFICE OF THE CLERK

No. 13-1175

IN THE

Supreme Court of the United States

CITY OF LOS ANGELES,

Petitioner,

v.

NARANJIBHAI PATEL, ET AL.,

Respondents.

ON WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE NINTH CIRCUIT

JOINT APPENDIX

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Petition for Writ of Certiorari filed Mar. 24, 2014
Certiorari Granted Oct. 20, 2014

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United States Court of Appeals
for the Ninth Circuit

08-56567

Naranjibhai Patel, et al v. City of Los Angeles
Trial Judge: Dale S. Fischer, District Judge

Date Filed: 03/02/2005
Date Order/Judgment: 09/05/2008

07/17/2012	37	FILED OPINION (HARRY PREGERSON, RICHARD R. CLIFTON and CARLOS T. BEA) AFFIRMED. Judge: HP Dissenting, Judge: RRC Authoring, Judge: CTB FILED AND ENTERED JUDGMENT. [8252467] (PH) [Entered: 07/17/2012 09:34 AM]
02/13/2013	45	Filed Order for PUBLICATION (ALEX KOZINSKI) Upon the vote of a majority of nonrecused active judges, it is ordered that this case be reheard en banc pursuant to Federal Rule of Appellate Procedure 35(a) and Circuit Rule 35–3. The threejudge panel opinion shall not be cited as precedent by or to any court of the Ninth Circuit. [8511864] (RP) [Entered: 02/13/2013 09:18 AM]

06/17/2013	59	Filed order (ALEX KOZINSKI) The parties shall be prepared to discuss the relevance of Sibron v. New York, 392 U.S. 40 (1968), to the Patels' facial Fourth Amendment challenge to Los Angeles Municipal Code § 41.49. [8670431] (SM) [Entered: 06/17/2013 02:51 PM]
12/24/2013	61	FILED OPINION (ALEX KOZINSKI, DIARMUID F. O'SCANNLAIN, RAYMOND C. FISHER, MARSHA S. BERZON, RICHARD C. TALLMAN, RICHARD R. CLIFTON, CONSUELO M. CALLAHAN, MILAN D. SMITH, JR., MARY H. MURGUIA, MORGAN B. CHRISTEN and PAUL J. WATFORD) REVERSED AND REMANDED. Judge: RCT Dissenting, Judge: RRC Dissenting, , Judge: PJW Authoring. FILED AND ENTERED JUDGMENT. [8914635] (RP) [Entered: 12/24/2013 07:10 AM]
01/17/2014	62	MANDATE ISSUED.(AK, DFO, RCF, MSB, RCT, RRC, CMC, MDS, MHM, MBC and PJW) [8943618] (JFF) [Entered: 01/17/2014 02:10 PM]
04/01/2014	68	Received notice from the

		Supreme Court: petition for certiorari filed on 03/24/2014. Supreme Court Number 13-1175. [9039547] (RR) [Entered: 04/01/2014 12:56 PM]
10/22/2014	81	Received notice from the Supreme Court. Petition for certiorari GRANTED on 10/20/2014. Supreme Court Number 13-1175. [9285844] (RR) [Entered: 10/22/2014 09:31 AM]

U.S. District Court for the Central District of California (Western Division – Los Angeles)

CIVIL DOCKET FOR

CASE #: 2:05-cv-01571-DSF-AJW

Naranjibhai Patel et al v. Los Angeles City of et al
Assigned to: Judge Dale S. Fischer
Referred to: Magistrate Judge Andrew J. Wistrich
Related Case: 2:03-cv-03610-DSF-AJW
Case in other court: 9th CCA, 08-56567
Cause: 42:1983 Civil Rights Act

Date Filed: 03/02/2005
Jury Demand: Both
Nature of Suit: 440 Civil Rights: Other
Jurisdiction: Federal Question

Date Filed	#	Docket Text
03/02/2005	1	COMPLAINT against defendants Marisco, Gallegos, Koval, Vargas, Davila, Los Angeles City of, William Bratton, Lopez, Sanchez. (Filing fee $250) Jury Demand. filed by plaintiffs Naranjibhai Patel, Ramilaben Patel.(jag,) (Entered: 03/08/2005)
07/01/2005	17	FIRST AMENDED COMPLAINT against Defendants Cotu pf Los Angeles,

		City of Los Angeles Police Chief William Bratton, City of Los Angeles Plice Officers Lopez, Sanchez, Marisco, Gallegos, Koval, Vargas, Davila, and Does 8 through 10 inclusive, amending Complaint 1 with Jury Demand, filed by Plaintiffs Naranjibhai Patel and Ramilaben Patel. (gk,) Modified on 7/5/2005 (gk,). (Entered: 07/05/2005)
02/17/2006	22	STIPULATION TO CONSOLIDATE AND DISMISS AND ORDER by Judge Dale S. Fischer: Cases consolidated for all purposes, including trial, lead case CV 05-1571 DSF with member cases CV 04-2192 DSF and CV 03-3610 DSF. Defendants William Bratton, LAPD Officers Lopez (31911), Lauraine Harrington (33002), Sanchez (32705), Marisco (32006), Gallegos (33847), Koval (32668), Vargas (31332), Davila (31802), Michael Barrios, Michael Shea, Yvonne Enriquez, Stinson Brown, David Drew, Edward Pigao, Stephanie Tuller, and all individual defendants, are dismissed without prejudice from each action, and shall not be brought into the consolidated action. The sole issue in the

		consolidated action is the constitutionality of Los Angeles Municipal Code Section 41.49; that ther are no damages claims; and that Monell claims are not at issue. Any 14th Amendment Equal Protection Clause claims, alleging racial discrimination, are dismissed from this action. Each party will bear his or her own costs and attorney fees for litigation regarding said defendants. See document for further details. (gk,) (Entered: 02/21/2006)
12/07/2006	41	MINUTES OF Court Trial (1st Day) held and completed before Judge Dale S. Fischer: Witnesses called, sworn and testified. Exhibits admitted. Case submitted. Briefs to be filed by 1/8/2007 for Plaintiff and 1/22/2007 by Defendant. Court Reporter: Bridget Montero. (gk,) (Entered: 12/12/2006)
05/29/2007	44	ORDER FOLLOWING 12/7/2006 BENCH TRIAL by Judge Dale S. Fischer: The Court dismisses as moot Plaintiffs' claims for violation of their rights under the Due Process Clause and the Equal Protection Clause of the Fourteenth Amendment. Should

		they wish to proceed with their Fourth Amendment claim under the amended ordinance, Plaintiffs may file an amended complaint within 21 days from the date of this Order. If Plaintiffs do not timely file an amended complaint, the Court will dismiss the remainder of the action without prejudice. (gk,) (Entered: 05/30/2007)
06/19/2007	45	SECOND AMENDED COMPLAINT against Defendants City of Los Angeles, City of Los Angeles Police Chief William Bratton, City of Los Angeles Police Officer Lopez, City of Los Angeles Police Officer Sanchez, City of Los Angeles Police Officer Marisco, City of Los Angeles Police Officer Gallegos, City of Los Angeles Police Officer Koval, City of Los Angeles Police Officer Vargas, City of Los Angeles Police Officer Davila, and Does 8 through 10 inclusive; amending First Amended Complaint 17 ; with Jury Demand filed by Plaintiffs Naranjibhai Patel and Ramilaben Patel. (gk) (Entered: 06/29/2007)
08/28/2008	61	MINUTES OF Court Trial (1st

		Day) held and completed before Judge Dale S. Fischer. Plaintiff rest. Defendant rest. Case submitted. Parties submit on trial briefs.Court Reporter: Pamela Seijas. (sch) (Entered: 09/17/2008)
09/02/2008	59	FINAL PRETRIAL CONFERENCE ORDER approved by Judge Dale S. Fischer. (See Order for Details). (sch) (Entered: 09/03/2008)
09/05/2008	60	FINDINGS OF FACT AND CONCLUSIONS OF LAW After Court Trial signed by Judge Dale S. Fischer. (mg) (Entered: 09/05/2008)
09/05/2008	62	JUDGMENT FOR DEFENDANTS AFTER COURT TRIAL by Judge Dale S. Fischer, in favor of Defendants City of Los Angeles, William Bratton, Lopez, Sanchez, Marisco, Gallegos, Koval, Vargas, Davila against Plaintiffs Naranjibhai Patel, Ramilaben Patel. The Court having conducted a trial of this case, having reviewed the evidence submitted by the parties, and having issued its Findings of Fact and Conclusions of Law After Court Trial, it is ORDERED, ADJUDGED AND

		DECREED that judgment be entered against plaintiffs and in favor of defendants, that the plaintiffs take nothing, and that defendants recover its costs of suit pursuant to a bill of costs filed in accordance with 28 U.S.C. § 1920. (MD JS-6, Case Terminated). (sch) Modified on 9/17/2008 (sch). (Entered: 09/17/2008)
09/17/2008	63	NOTICE OF APPEAL to the 9th CCA filed by Plaintiff Naranjibhai Patel, Ramilaben Patel. (Weiser, Frank) (Entered: 09/17/2008)

U.S. District Court for the Central District of California (Western Division – Los Angeles)

CIVIL DOCKET FOR

CASE #: 2:04-cv-02192-DSF-AJW

Rameshbhai C Bhakta et al v. Los Angeles City of et al
Assigned to: Judge Dale S. Fischer
Referred to: Magistrate Judge Andrew J. Wistrich
Lead case: 2:05-cv-01571-DSF-AJW
Member case: (View Member Case)
Cause: 42:1983 Civil Rights Act

Date Filed: 03/30/2004
Date Terminated: 08/13/2008
Jury Demand: Defendant
Nature of Suit: 440 Civil Rights: Other
Jurisdiction: Federal Question

Date Filed	#	Docket Text
03/30/2004	1	COMPLAINT against defendants. (Filing fee $150.) Jury Demand. filed by plaintiff Manharbhai G Bhakta, Manjula Bhakta -, Rajendrakumar N Bhakta, Rameshbhai C Bhakta, Sarojben D Bhakta.(jag,) (Entered: 04/05/2004)
02/17/2006	16	STIPULATION TO CONSOLIDATE AND DISMISS AND ORDER by

		Judge Dale S. Fischer: Cases consolidated for all purposes, including trial, lead case CV 05-1571 DSF with member cases CV 04-2192 DSF and CV 03-3610 DSF. Defendants William Bratton, LAPD Officers Lopez (31911), Lauraine Harrington (33002), Sanchez (32705), Marisco (32006), Gallegos (33847), Koval (32668), Vargas (31332), Davila (31802), Michael Barrios, Michael Shea, Yvonne Enriquez, Stinson Brown, David Drew, Edward Pigao, Stephanie Tuller, and all individual defendants, are dismissed without prejudice from each action, and shall not be brought into the consolidated action. The sole issue in the consolidated action is the constitutionality of Los Angeles Municipal Code Section 41.49; that ther are no damages claims; and that Monell claims are not at issue. Any 14th Amendment Equal Protection Clause claims, alleging racial discrimination, are dismissed from this action. Each party

		will bear his or her own costs and attorney fees for litigation regarding said defendants. See document for further details. (yc,) (Entered: 02/27/2006)

U.S. District Court for the Central District of California (Western Division – Los Angeles)

CIVIL DOCKET FOR

CASE #: 2:03-cv-03610-DSF-AJW

Rajendrakumar Bhakta, et al v. Los Angeles City of, et al
Assigned to: Judge Dale S. Fischer
Referred to: Discovery Andrew J. Wistrich
Demand: $0
Related Cases:
2:05-cv-01571-DSF-AJW
2:09-cv-05978-DSF-AJW
2:10-cv-08495-DSF-AJW
2:10-cv-05092-DSF-AJW
Cause: 42:1983 Civil Rights Act

Date Filed: 05/21/2003
Date Terminated: 07/02/2008
Jury Demand: Defendant
Nature of Suit: 440 Civil Rights: Other
Jurisdiction: Federal Question

Date Filed	#	Docket Text
05/21/2003	1	COMPLAINT filed Summons(es) issued referred to Discovery Andrew J. Wistrich (jag) (Entered: 05/27/2003)
08/19/2003	4	FIRST AMENDED COMPLAINT [1-1] by plaintiff; adding Satish J Patel, Praful K Bhakta, Hitendra D Bhakta, Pankaj Patel, Naranbhai

		Patel, Deepak Patel, Dinesh Patel, Jitubhai Bhakta , Ratlalbhai Patel, Ashokbhai Patel, Kamalbhai Patel, Dilip Denapiya, Sanmukh Patel, Kishor Bhakta, Raman Bhakta, Jayesh Bhakta, Mahendra Bhakta, Yogesh Patel, Sanmukh Bhakta, Pratap Bhakta, Jitendra Bhakta, Praful Patel, Nilesh Bhakta, Kiranbhai Bhakta -, Dilip Patel, Deepak Patel, Hitendra Bhakta -, Naresh Bhakta, Vijay Patel, Rambhai Patel -, Pravin Bhakta, R N Ghandi, Hasmukh Patel , Bharatbhai Bhakta, LA Lodging Associat, Young Mun, Chris Jordan, Patricia Austin, Ricot Lopez, Sanchez, Rockard J Delgadillo; jury demand. Summons issued on first amended complaint (bg) (Entered: 08/20/2003)
02/17/2006	41	STIPULATION AND ORDER that because these cases involve identical legal issues regarding the constitutionality of LAMC 41.49, Rameshbhai Bhakta, et al, vc. City of Los Angeles, Case Number CV04-2192 DSF, Rajendrakumar Bhakta, et. al.

		v. City of Los Angeles, et al, Case Number CV03-3610 DSF should be consolidated for all purposes, including trial, with Naranjibhai Patel, et al, v. City of Los Angeles, et al., Case Number CV05-1571 DSF, such that case Number CV05-1571 will be the lead case. The parties further stipulate through their undersigned designated counsel, that defendants William Bratton, LAPD Officers Lopez (31911), Lauraine Harrginton (33002), Sanchez (32705), Marisco (32006), Gallegos (33847), Koval (32668), Vargas (31332), Davila (31802), Michael Barrios, Michael Shea, Yvonne Enriquez, Stinson Brown, David Drew, Edward Pigao, Stephanie Tuller, and all individual defendants, are dismissed without prejudice from each action, and shall not be brought into the consolidated action by Judge Dale S. Fischer.(bp,) (Entered: 02/21/2006)
07/02/2008	43	MINUTES (IN CHAMBERS ORDER) by Judge Dale S. Fischer: Case should have

		been closed on 2/17/06 re: Stipulation 41 .(Made JS-6. Case Terminated.) (mg) (Entered: 07/07/2008)

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Attorney for Plaintiffs
RAJENRAKUMAR N. BHAKTA,
MANJULA BHAKTA, MANHARBHAI
G. BHAKTA and SAROJ BHAKTA

UNITED STATES DISTRICT COURT
CENTRAL DISTRICT OF CALIFORNIA

No. 03-3610 GHK (AJWx)

FILED
2002 MAY 21 PM 3:37

RAJENDRAKUMAR N. BHAKTA; MANJULA BHAKTA; MANHARBHAI G. BHAKTA; SAROJ BHAKTA,

Plaintiffs,

vs.

CITY OF LOS ANGELES, a municipal corporation; CITY OF LOS ANGELES POLICE CHIEF WILLIAM BRATTON; CITY OF LOS ANGELES POLICE OFFICER MICHAEL SHEA; CITY OF LOS ANGELES POLICE OFFICER YVONNE ENRIQUEZ; CITY OF LOS ANGELES POLICE OFFICER STINSON BROWN; CITY OF LOS ANGELES POLICE OFFICER ARELLANO, Badge No. 33002, sued as DOE 1; CITY OF LOS ANGELES POLICE OFFICER DREW, Badge No. Unknown,

sued as DOE 2; CITY OF LOS ANGELES POLICE OFFICER PIGAO, Badge No. Unknown, sued as DOE 3; CITY OF LOS ANGELES POLICE OFFICER BARRIOS, Badge No. Unknown, sued as DOE 4; CITY OF LOS ANGELES POLICE OFFICER TULLER, Badge No. Unknown, sued as DOE 5; and DOES 6 THROUGH 10 INCLUSIVE,

Defendants.

COMPLAINT FOR DAMAGES
(VIOLATION OF FEDERAL CIVIL RIGHTS)

DEMAND FOR JURY TRIAL

ENTERED ON ICMS
MAY 27 2003
CV /s/

Plaintiffs, RAJENRAKUMAR N. BHAKTA, MANJULA BHAKTA, MANHARBHAI G. BHAKTA and SAROJ BHAKTA (collectively "Plaintiffs"), as a Complaint against Defendants, state and allege as follows:

JURISDICTION AND VENUE

1. Jurisdiction of the federal court exists pursuant to 28 U.S.C. Section 1331 and 28 U.S.C. Section 1343 (a)(3). This action, which arises under the laws and Constitution of the United States, specifically, the Fourth and Fourteenth Amendments, involves violations of federal law pursuant to 42 U.S.C. Section 1983 and the United States Constitution under said provisions.

2. Venue is proper in this District pursuant to 28 U.S.C. Section 1391(b) in that

Defendant CITY OF LOS ANGELES, is a public entity in this District, and the claims arose in this District.

PARTIES

3. Plaintiffs were at all times material herein the owners and operators of a motel named the Boulevard Motel ("Motel") located at 6919 South Figeuroa Street, Los Angeles, California. MANHARBHAI G. BHAKTA and SAROJ BHAKTA are the owners and operators of the motel. RAJENRAKUMAR N. BHAKTA and MANJULA BHAKTA are the on-site managers who reside at the motel.

4. Defendant CITY OF LOS ANGELES ("Defendant" or "City") is a municipal corporation organized and existing under the Constitution and laws of the State of California. LOS ANGELES POLICE CHIEF WILLIAM BRATTON ("Chief Bratton") was at all times material herein the Police Chief of the City of Los Angeles Police Department ("LAPD").

5. Defendants CITY OF LOS ANGELES POLICE OFFICER MICHAEL SHEA ("Officer Shea"), CITY OF LOS ANGELES POLICE OFFICER YVONNE ENRIQUEZ ("Officer Enriquez"), CITY OF LOS ANGELES POLICE OFFICER STINSON BROWN ("Officer Brown") were at all times material herein police officers and employees of the LAPD.

6. Defendants CITY OF LOS ANGELES POLICE OFFICER ARELLANO, Badge No. 33002, sued as DOE 1 ("Officer Arellano"), CITY OF LOS

ANGELES POLICE OFFICER DREW, Badge No. Unknown, sued as DOE 2 ("Officer Drew"); CITY OF LOS ANGELES POLICE OFFICER PIGAO, Badge No. Unknown, sued as DOE 3 ("Officer Pigao"); CITY OF LOS ANGELES POLICE OFFICER BARRIOS, Badge No. Unknown, sued as DOE 4 ("Officer Barrios") and CITY OF LOS ANGELES POLICE OFFICER TULLER, Badge No. Unknown, sued as DOE 5 ("Officer Tuller") were at all times material herein police officers and employees of the LAPD. At present, plaintiffs do not know the first names of said defendants and do not know the badge numbers for Officers Drew, Pigao and Barrios.

7. The true names and capacities, whether individual, corporate, associate or otherwise, herein named as DOES 1 through 10, and persons heretofore unknown involved in the actions taken against plaintiffs are unknown to plaintiffs at this time. Plaintiffs are informed and believe and based thereon allege that each of the DOE defendants is responsible in some manner for the occurrences herein referred to, and that plaintiffs' injuries and damages as herein alleged were proximately caused by those defendants. Plaintiffs sue said defendants by such fictitious names on the grounds that the true names and capacities of said defendants are unknown to them at this time. Plaintiffs will amend this complaint as and when the true names and capacities of said DOE defendants are ascertained. Each reference in this complaint to "defendant," "defendants" or a specifically named defendant also refers to defendants sued under fictitious names.

BACKGROUND FACTS COMMON TO ALL CLAIMS

8. On August 17, 2002, Officers Drew and Arellano went to conduct a motel registration check pursuant to Los Angeles Municipal Code ("LAMC") 41.49. Without Plaintiffs consent, authorization of Plaintiffs, or an administrative or any other type of warrant or court order, Officers Drew and Arellano entered onto the motel and further entered where Plaintiffs Rajendrakumar N. Bhakta and Manjula Bhakta reside, and in their presence inspected and seized motel registration cards, threatening said plaintiffs with arrest. Plaintiff Rajendrakumar N. Bhakta was cited for violation of LAMC 41.49(b), failure to maintain a register, but such citation was eventually dismissed and no charges were filed.

9. On September 14, 2002, Officers Tuller and Arellano went to conduct a motel registration check pursuant to Los Angeles Municipal Code ("LAMC") 41.49. Without Plaintiffs consent, authorization of Plaintiffs, or an administrative or any other type of warrant or court order, Officers Tuller and Arellano entered onto the motel and further entered where Plaintiffs Rajendrakumar N. Bhakta and Manjula Bhakta reside, and in their presence inspected and seized motel registration cards, threatening said plaintiffs with arrest. Plaintiff Rajendrakumar N. Bhakta was cited for violation of LAMC 41.49(b), failure to maintain a register, and said plaintiff was eventually charged with a misdemeanor to which he pleaded no contest in the Los Angeles Superior Court and paid a fine and placed on summary probation.

10. On October 31, 2002, Officer Arellano went to conduct a motel registration check pursuant to Los Angeles Municipal Code ("LAMC") 41.49. Without Plaintiffs consent, authorization of Plaintiffs, or an administrative or any other type of warrant or court order, Officer Arellano entered onto the motel and further entered where Plaintiffs Rajendrakumar N. Bhakta and Manjula Bhakta reside, and in their presence inspected and seized motel registration cards, once again threatening said plaintiffs with arrest. Plaintiff Rajendrakumar N. Bhakta was cited for violation of LAMC 41.49(b), failure to maintain a register, and said plaintiff was eventually charged with a misdemeanor which was dismissed in reference the plea of no contest in the Los Angeles Superior Court and paid a fine and placed on summary probation.

11. On February 24, 2002, Officers Barrios and Arellano went to conduct a motel registration check pursuant to Los Angeles Municipal Code ("LAMC") 41.49. Once again, without Plaintiffs consent, authorization of Plaintiffs, or an administrative or any other type of warrant or court order, Officers Barrios and Arellano entered onto the motel and further entered where Plaintiffs Rajendrakumar N. Bhakta and Manjula Bhakta reside, and in their presence inspected and seized motel registration cards. Plaintiff Rajendrakumar N. Bhakta was cited for violation of LAMC 41.49(b), failure to maintain a register, and said plaintiff was eventually charged with an infraction to which he was ordered to pay a monetary fine.

12. In taking the said actions stated in paragraphs 8-11 above, Officers Drew, Tuller and

Arellano did so in accordance with the express authority of LAMC 41.49 which authorizes warantless [*sic*] inspections of motels regarding motel registration at any time of the day and night, and with the express authority, knowledge and ratification of the other named defendants, including Officer Pigao who participated with Officer Arellano in the monitoring and investigation of the motel.

13. In taking the said actions stated in paragraphs 8-11 above, at no time has Plaintiff Manjula Bhakta been convicted of any violations of the LAMC and there are no charges pending against her.

14. In taking the said actions stated in paragraphs 8-11 above, at no time have Plaintiffs Manharbhai G. Bhakta and Saroj Bhakta been charged or convicted of any violations of the LAMC and there are no charges pending against them.

15. Said defendants have threatened, and continue to threaten enforcing in the near future LAMC 41.49 in an unconstitutional manner against said plaintiffs, and have further threatened to use the claimed evidence gathered by way of such unconstitutuional [*sic*] actions in any civil or criminal abatement proceedings against plaintiffs or the the [*sic*] motel and continue to come onto the motel property at all times of the day and night without plaintiffs consent, authorization, warrant or court order and in doing so have unreasonably interefered [*sic*] with plaintiffs operation of their motel business.

Based on the above facts, Plaintiffs allege the following claims:

FIRST CLAIM FOR RELIEF

(Violation of Civil Rights Under 42 U.S.C. Section 1983 by Plaintiffs Against All Defendants)

16. Plaintiffs reallege and incorporate herein by reference to each and every allegation contained in Paragraphs 1 through 15, and all its subparts, inclusive, as set forth hereinabove.

17. Plaintiffs are informed and believe, and based upon such information and belief allege, that in doing all of the things herein mentioned, defendants, and each of them, acted under color of the statutes, regulations, customs and usages of the City of Los Angeles and the State of California for purposes of "state action" under 42 U.S.C. Section 1983.

18. Plaintiffs are further informed and believe, and based upon such information and belief allege, that by taking the actions hereinabove alleged in paragraphs 8 thru 15 above, defendants, and each of them, violated and continue to threaten to violate the constitutional and civil rights of Plaintiffs, in particular to their rights under the Fourth Amendment as incorporated by the Fourteenth Amendment of the United States Constitution to be free from unreasonable searches and seizures of their person or property; to their right to the equal protection of the laws under the Equal Protection Clause of the Fourteenth Amendment of the United States Constitution and to their right to their right to their rights [*sic*] under

the procedural component of the Due Process Clause of the United States Constitution.

19. Defendant City in engaging in the above-described conduct, is liable as it acted according to official policy, custom and practice of the City. The individual defendants are not entitled to qualified immunity as they violated plaintiffs' constitutional and civil rights, and in doing so violated clearly established law in a manner that was unreasonable under the circumstances.

20. As a proximate result of the foregoing acts of defendants, and each of them, plaintiffs have suffered and continue to suffer extreme economic and non-economic damages, including but not limited to severe emotional distress and unreasonable intereference [*sic*] with their motel business. Plaintiffs are informed and believe, and based upon such information and belief alleges, that the damages he has suffered and continue to incur is in a sum in excess of $1,000,000.00 and are also entitled to their reasonable attorneys fees under 42 U.S.C. section 1988.

WHEREFORE, Plaintiffs pray judgment against Defendants, and each of them, as follows:

FIRST CLAIM FOR RELIEF

1. For damages in a sum in excess of $1,000,000.00;
2. For attorney's fees pursuant to 42 U.S.C. Section 1988;
3. For costs of suit; and

4. For such other and further relief as the Court deems just and proper.

DATED: May 21, 2003

LAW OFFICES OF FRANK A. WEISER

By: /s/ Frank A. Weiser

FRANK A. WEISER, Attorney for Plaintiffs RAJENRAKUMAR N. BHAKTA, MANJULA BHAKTA, MANHARBHAI G. BHAKTA and SAROJ BHAKTA

DEMAND FOR JURY TRIAL

Plaintiffs hereby demand a jury trial pursuant to F.R.C.P 38.

DATED: May 21, 2003

LAW OFFICES OF FRANK A. WEISER

By: /s/ Frank A. Weiser

FRANK A. WEISER, Attorney for Plaintiffs RAJENRAKUMAR N. BHAKTA, MANJULA BHAKTA, MANHARBHAI G. BHAKTA and SAROJ BHAKTA

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Attorney for Plaintiff
LOS ANGELES LODGING
ASSOCIATION and
All Individually Named
Plaintiffs

UNITED STATES DISTRICT COURT
CENTRAL DISTRICT OF CALIFORNIA

No. CV 03-3610 GHK (AJWx)

FILED
CLERK, U.S. DISTRICT COURT
AUG 19 2003
/s/ 1:32
CENTRAL DISTRICT OF CALIFORNIA
BY DEPUTY

RAJENDRAKUMAR N. BHAKTA; MANJULA BHAKTA; MANHARBHAI G. BHAKTA; SAROJ BHAKTA; SATISH J. PATEL; PRAFUL K. BHAKTA; HITENDRA D. BHAKTA; PANKAJ PATEL; NARANBHAI PATEL; DEEPAK PATEL; DINESH PATEL; JITUBHAI BHAKTA; RATLALBHAI PATEL; ASHOKBHAI PATEL; BABUBHAI PATEL; AMRATBHAI PATEL; KAMALBHAI PATEL; DILIP DENAPIYA; SANMUKH PATEL; KISHOR BHAKTA; RAMAN BHAKTA; JAYESH BHAKTA; MAHENDRA BHAKTA; YOGESH PATEL; SANMUKH BHAKTA;

PRATAP BHAKTA; JITENDRA BHAKTA; PRAFUL PATEL; NILESH BHAKTA; KIRANBHAI BHAKTA; DILIP PATEL; DEEPAK PATEL; HITENDRA, BHAKTA; NARESH BHAKTA; VIJAY PATEL; RAMBHAI PATEL; PRAVIN BHAKTA; R.N. GHANDI; HASMUKH B. PATEL; BHARATBHAI BHAKTA; LOS ANGELES LODGING ASSOCIATION,

Plaintiffs,

vs.

CITY OF LOS ANGELES, a municipal corporation; CITY OF LOS ANGELES POLICE CHIEF WILLIAM BRATTON; CITY OF LOS ANGELES POLICE OFFICER MICHAEL SHEA; CITY OF LOS ANGELES POLICE OFFICER YVONNE ENRIQUEZ; CITY OF LOS ANGELES POLICE OFFICER STINSON BROWN; CITY OF LOS ANGELES POLICE OFFICER ARELLANO, Badge No. 33002, sued as DOE 1; CITY OF LOS ANGELES POLICE OFFICER DREW, Badge No. Unknown, sued as DOE 2; CITY OF LOS ANGELES POLICE OFFICER PIAGO, Badge No. Unknown, sued as DOE 3; CITY OF LOS ANGELES POLICE OFFICER BARRIOS, Badge No. Unknown, sued as DOE 4; CITY OF LOS ANGELES POLICE OFFICER TULLER, Badge No. Unknown, sued as DOE 5; CITY OF LOS ANGELES POLICE OFFICER YOUNG MUN; CITY OF LOS ANGELES POLICE OFFICER CHRIS JORDAN; CITY OF LOS ANGELES POLICE OFFICER PATRICIA AUSTIN; CITY OF LOS ANGELES POLICE OFFICER RICOT LOPEZ; CITY OF LOS ANGELES POLICE OFFICER SANCHEZ, Badge Number Unknown,

sued as DOE 6; CITY ATTORNEY ROCKARD J. DELGADILLO and DOES 7 THROUGH 10 INCLUSIVE,

Defendants.

FIRST AMENDED COMPLAINT FOR DAMAGES; INJUNCTIVE AND DECLARATORY RELIEF

[VIOLATION OF FEDERAL CIVIL RIGHTS]

DEMAND FOR JURY TRIAL

ENTERED ON ICMS
AUG 20 2003
CV /s/

Pursuant to *Federal Rule of Civil Procedure* Rule 15(a), Plaintiffs as a First Amended Complaint against Defendants, state and allege as follows:

JURISDICTION AND VENUE

1. Jurisdiction of the federal court exists pursuant to 28 U.S.C. Section 1331 and 28 U.S.C. Section 1343 (a)(3). This action, which arises under the laws and Constitution of the United States, specifically, the Fourth and Fourteenth Amendments, involves violations of federal law, actionable pursuant to 42 U.S.C. Sections 1982, 1983, and 1985(3).

2. Venue is proper in this District pursuant to 28 U.S.C. Section 1391(b) in that Defendant CITY OF LOS ANGELES, is a public entity in this District, and the claims arose in this District.

PARTIES

3. Plaintiff LOS ANGELES LODGING ASSOCIATION ("LALA") is an association of motel owners and operators all operating within the City of Los Angeles. LALA sues in its representative capacity on behalf of all of its members for declaratory and injunctive relief only. Some of the members of LALA who have individually joined in this suit are listed in paragraphs 4 and 5 below.

4. Plaintiffs RAJENDRAKUMAR N. BHAKTA, MANJULA BHAKTA, MANHARBHAI G. BHAKTA and SAROJ BHAKTA, were at all times material herein the owners and operators of a motel named the Boulevard Motel located at 6919 South Figeuroa Street, Los Angeles, California. MANHARBHAI G. BHAKTA and SAROJ BHAKTA are the owners and operators of the motel. RAJENRAKUMAR N. BHAKTA and MANJULA BHAKTA are the on-site managers who reside at the motel.

5. Plaintiffs SATISH J. PATEL; PRAFUL K. BHAKTA; HITENDRA D. BHAKTA; PANKAJ PATEL; NARANBHAI PATEL; DEEPAK PATEL; DINESH PATEL; JITUBHAI BHAKTA; RATLALBHAI PATEL; ASHOKBHAI PATEL; BABUBHAI PATEL; AMRATBHAI PATEL; KAMALBHAI PATEL; DILIP DENAPIYA; SANMUKH PATEL; KISHOR BHAKTA; RAMAN BHAKTA; JAYESH BHAKTA; MAHENDRA BHAKTA; YOGESH PATEL; SANMUKH BHAKTA; PRATAP BHAKTA; JITENDRA BHAKTA; PRAFUL PATEL; NILESH BHAKTA; KIRANBHAI BHAKTA; DILIP PATEL; DEEPAK PATEL; HITENDRA

BHAKTA; NARESH BHAKTA; VIJAY PATEL; RAMBHAI PATEL; PRAVIN BHAKTA; R.N. GHANDI; HASMUKH B. PATEL and BHARATBHAI BHAKTA were at all times material herein the owners and operators of motels within the City of Los Angeles. Each of the individually named plaintiffs in this paragraph own and operate their own motels seperately [*sic*] from the other named individually named plaintiffs and have no legal and beneficial interest in the Boulevard Motel.

6. Each of the individually named plaintiffs are members of LALA. Said individually named plaintiffs join in LALA's request for declaratory and injunctive relief and also request damages on their individual behalf. All of the members of LALA including all of the individually named plaintiffs to this action are of Asian-Indian origin and appearance.

7. Defendant CITY OF LOS ANGELES ("Defendant" or "City") is a municipal corporation organized and existing under the Constitution and laws of the State of California.

8. Defendant CITY OF LOS ANGELES POLICE CHIEF WILLIAM BRATTON ("Chief Bratton") was at all times material herein the Police Chief of the City of Los Angeles Police Department ("LAPD"). Chief Bratton is sued in his individual and official capacity. Defendant CITY ATTORNEY ROCKARD J. DELGADILLO ("Delgadillo") was at all times material herein the City Attorney of the City of Los Angeles charged with oversight and enforcement of the City of Los Angeles City Attorney's Office. Delgadillo is sued in his individual

and official capacity and at all times material herein took the actions described in this complaint outside the scope of his prosecutorial functions as city attorney.

8. [*sic*] Defendants CITY OF LOS ANGELES POLICE OFFICER MICHAEL SHEA ("Officer Shea"), CITY OF LOS ANGELES POLICE OFFICER YVONNE ENRIQUEZ ("Officer Enriquez"), CITY OF LOS ANGELES POLICE OFFICER STINSON BROWN ("Officer Brown"); CITY OF LOS ANGELES POLICE OFFICER YOUNG MUN ("Officer Mun"); CITY OF LOS ANGELES POLICE OFFICER CHRIS JORDAN ("Officer Jordan"); CITY OF LOS ANGELES POLICE OFFICER PATRICIA AUSTIN ("Officer Austin"); CITY OF LOS ANGELES POLICE OFFICER RICOT LOPEZ ("Officer Lopez") were at all times material herein police officers and employees of the LAPD. Said defendants are sued in their official and individual capacities.

9. Defendants CITY OF LOS ANGELES POLICE OFFICER ARELLANO, Badge No. 33002, sued as DOE 1 ("Officer Arellano"), CITY OF LOS ANGELES POLICE OFFICER DREW, Badge No. Unknown, sued as DOE 2 ("Officer Drew"); CITY OF LOS ANGELES POLICE OFFICER PIGAO, Badge No. Unknown, sued as DOE 3 ("Officer Pigao"); CITY OF LOS ANGELES POLICE OFFICER BARRIOS, Badge No. Unknown, sued as DOE 4 ("Officer Barrios"); CITY OF LOS ANGELES POLICE OFFICER TULLER, Badge No. Unknown, sued as DOE 5 ("Officer Tuller"); and CITY OF LOS ANGELES POLICE OFFICER SANCHEZ, Badge No. Unknown, sued as DOE 6 ("Officer Sanchez")

was at all times material herein police officers and employees of the LAPD. At present, plaintiffs do not know the first names of said defendants and do not know the badge numbers for Officers Drew, Pigao, Barrios Tuller and Sanchez.

10. The true names and capacities, whether individual, corporate, associate or otherwise, herein named as DOES 1 through 10, and persons heretofore unknown involved in the actions taken against plaintiffs are unknown to plaintiffs at this time. Plaintiffs are informed and believe and based thereon allege that each of the DOE defendants is responsible in some manner for the occurrences herein referred to, and that plaintiffs' injuries and damages as herein alleged were proximately caused by those defendants. Plaintiffs sue said defendants by such fictitious names on the grounds that the true names and capacities of said defendants are unknown to them at this time. Plaintiffs will amend this complaint as and when the true names and capacities of said DOE defendants are ascertained. Each reference in this complaint to "defendant," "defendants" or a specifically named defendant also refers to defendants sued under fictitious names.

BACKGROUND FACTS COMMON TO ALL CLAIMS

11. On August 17, 2002, Officers Drew and Arellano went to conduct a motel registration check pursuant to Los Angeles Municipal Code ("LAMC") 41.49 at the Boulevard Motel. Without Plaintiffs Rajendrakumar Bhakta, Manjula Bhakta, Manharbhai G. Bhakta and Saroj Bhakta's consent, authorization of said Plaintiffs, or an administrative

or any other type of warrant or court order, Officers Drew and Arellano entered onto the motel and further entered where Plaintiffs Rajendrakumar N. Bhakta and Manjula Bhakta reside, and in their presence inspected and seized motel registration cards, threatening said plaintiffs with arrest. Plaintiff Rajendrakumar N. Bhakta was cited for violation of LAMC 41.49(b), failure to maintain a register, but such citation was eventually dismissed and no charges were filed.

12. On September 14, 2002, Officers Tuller and Arellano went to conduct a motel registration check pursuant to Los Angeles Municipal Code ("LAMC") 41.49 at the Boulevard Motel. Without Plaintiffs Rajendrakumar Bhakta, Manjula Bhakta, Manharbhai G. Bhakta and Saroj Bhakta's consent, authorization of said Plaintiffs, or an administrative or any other type of warrant or court order, Officers Tuller and Arellano entered onto the motel and further entered where Plaintiffs Rajendrakumar N. Bhakta and Manjula Bhakta reside, and in their presence inspected and seized motel registration cards, threatening said plaintiffs with arrest. Plaintiff Rajendrakumar N. Bhakta was cited for violation of LAMC 41.49(b), failure to maintain a register, and said plaintiff was eventually charged with a misdemeanor to which he pleaded no contest in the Los Angeles Superior Court and paid a fine and placed on summary probation.

13. On October 31, 2002, Officer Arellano went to conduct a motel registration check pursuant to Los Angeles Municipal Code ("LAMC") 41.49 at the Boulevard Motel. Without Plaintiffs Rajendrakumar Bhakta, Manjula Bhakta,

Manharbhai G. Bhakta and Saroj Bhakta's consent, authorization of said Plaintiffs, or an administrative or any other type of warrant or court order, Officer Arellano entered onto the motel and further entered where Plaintiffs Rajendrakumar N. Bhakta and Manjula Bhakta reside, and in their presence inspected and seized motel registration cards, once again threatening said plaintiffs with arrest. Plaintiff Rajendrakumar N. Bhakta was cited for violation of LAMC 41.49(b), failure to maintain a register, and said plaintiff was eventually charged with a misdemeanor which was dismissed in reference the plea of no contest in the Los Angeles Superior Court and paid a fine and placed on summary probation.

14. On February 24, 2002, Officers Barrios and Arellano went to conduct a motel registration check pursuant to Los Angeles Municipal Code ("LAMC") 41.49 of the Boulevard Motel. Once again, without Plaintiffs Rajendrakumar Bhakta, Manjula Bhakta, Manharbhai G. Bhakta and Saroj Bhakta's consent, authorization of said Plaintiffs, or an administrative or any other type of warrant or court order, Officers Barrios and Arellano entered onto the motel and further entered where Plaintiffs Rajendrakumar N. Bhakta and Manjula Bhakta reside, and in their presence inspected and seized motel registration cards. Plaintiff Rajendrakumar N. Bhakta was cited for violation of LAMC 41.49(b), failure to maintain a register, and said plaintiff was eventually charged with an infraction to which he was ordered to pay a monetary fine.

15. In taking the said actions stated in paragraphs 11-14 above, Officers Drew, Tuller and

Arellano did so in accordance with the express authority of LAMC 41.49 which authorizes warantless [*sic*] inspections of motels regarding motel registration at any time of the day and night, and with the express authority, knowledge and ratification of the other named defendants, including Officer Pigao who participated with Officer Arellano in the monitoring and investigation of the motel. A certified copy of LAMC 41.49 is attached and incorporated herein as Exhibit "A"

16. In taking the said actions stated in paragraphs 11-14 above, at no time has Plaintiff Manjula Bhakta been convicted of any violations of the LAMC and there are no charges pending against her.

17. In taking the said actions stated in paragraphs 11-14 above, at no time have Plaintiffs Manharbhai G. Bhakta and Saroj Bhakta been charged or convicted of any violations of the LAMC and there are no charges pending against them.

18. From January 1, 2003 until the present, Defendants City, Shea, Enriquez, Brown, Arellano, Drew, Pigao, Barrios, Tuller, Mun, Jordan, Austin, Lopez and Sanchez, have actually enforced and threatened to continue to enforce in the near future LAMC 41.49, by conducting and authorizing warantless [*sic*] inspections of each of the named Plaintiffs' motels, and the motels of LALA's members, regarding motel registration; doing so at all times of the day and night, and with the express authority, knowledge and ratification of Chief Bratton, City Attorney Delgadillo, the City Council and other policymaking officials of the City; and in

enforcing LAMC 41.49 have further threatened to use the claimed evidence gathered in any alleged civil or criminal abatement proceedings against any of the individually named Plaintiffs and the members of LALA. In doing so said defendants have unreasonably interefered [*sic*] with the individually named Plaintiffs and LALA's members operation of their motel business.

Based on the above facts, Plaintiffs allege the following claims:

FIRST CLAIM FOR RELIEF

(Violation of Civil Rights Under 42 U.S.C. Section 1983 by All Plaintiffs Against All Defendants)

19. Plaintiffs reallege and incorporate herein by reference to each and every allegation contained in Paragraphs 1 through 18, and all its subparts, inclusive, as set forth hereinabove.

20. Plaintiffs are informed and believe, and based upon such information and belief allege, that in doing all of the things herein mentioned, defendants, and each of them, acted under color of the statutes, regulations, customs and usages of the City of Los Angeles and the State of California for purposes of "state action" under 42 U.S.C. Section 1983.

21. Plaintiffs are further informed and believe, and based upon such information and belief allege, that by taking the actions hereinabove alleged in paragraphs 11 thru 18 above, defendants, and each of them, violated and continue to threaten

to violate the constitutional and civil rights of the individually named Plaintiffs and LALA's members, in particular to their rights under the Fourth Amendment as incorporated by the Fourteenth Amendment of the United States Constitution to be free from unreasonable searches and seizures of their person or property; to their right to the equal protection of the laws under the Equal Protection Clause of the Fourteenth Amendment of the United States Constitution to be free from arbitrary discrimination in the enforcement of LAMC 41.49 whereby said enforcement has been done on a pretextual basis by defendants, and each of them, in order to drive Plaintiffs out of business and has also targeted Plaintiffs on the basis of their race, national origin and minority status that has not been so enforced against similarly situated persons; and to their rights under the procedural component of the Due Process Clause of the United States Constitution in the application of LAMC 41.49 as said ordinance is vague as applied to the individually named Plaintiffs and LALA's members and independent of their cinstitutional [*sic*] rights under the Fourth Amendment violates their property interests under the same procedural component of the Due Process Clause.

22. Defendant City in engaging in the above-described conduct, is liable as it acted according to official policy, custom and practice of the City. The individual defendants are not entitled to qualified immunity as they violated plaintiffs' constitutional and civil rights, and in doing so violated clearly established law in a manner that was unreasonable under the circumstances.

23. As a proximate result of the foregoing acts of defendants, and each of them, plaintiffs have suffered and continue to suffer extreme economic and non-economic damages, including but not limited to severe emotional distress and unreasonable intereference [*sic*] with their motel business according to proof at trial. Plaintiffs are informed and believe, and based upon such information and belief alleges, that the damages they have suffered and continue to incur is at least $1,000,000 per each individually named Plaintiff; are entitled to punitive and exemplary damages for the conduct of the individually named defendants; and are also entitled to a declaration that LAMC 41.49 is unconstitutional in violation of the individually named Plaintiffs and LALA's members constitutional rights as set forth in paragraph 21 above and appropriate injunctive relief. All of the individually named Plaintiffs and LALA are entitled to their reasonable attorneys fees under 42 U.S.C. section 1988.

SECOND CLAIM FOR RELIEF

(Violation of Civil Rights Under 42 U.S.C. Section 1982 by All Plaintiffs Against All Defendants)

24. Plaintiffs reallege and incorporate herein by reference to each and every allegation contained in Paragraphs 1 through 23, and all its subparts, inclusive, as set forth hereinabove.

25. Plaintiffs are informed and believe, and based upon such information and belief allege, that in doing all of the things herein mentioned,

defendants, and each of them, violated each of the individually named Plaintiffs and LALA's members rights as codified under 42 U.S.C. Section 1982, intentionally discriminating against them in the operation of their respective motel properties based upon their racial and national origin.

26. As a proximate result of the foregoing acts of defendants, and each of them, plaintiffs have suffered and continue to suffer extreme economic and non-economic damages, including but not limited to severe emotional distress and unreasonable intereference [*sic*] with their motel business according to proof at trial. Plaintiffs are informed and believe, and based upon such information and belief alleges, that the damages they have suffered and continue to incur is at least $1,000,000 per each individually named Plaintiff; are entitled to punitive and exemplary damages for the conduct of the individually named defendants and appropriate injunctive relief. All of the individually named Plaintiffs and LALA are entitled to their reasonable attorneys fees under 42 U.S.C. section 1988.

THIRD CLAIM FOR RELIEF

(Violation of Civil Rights Under 42 U.S.C. Section 1985(3) by All Plaintiffs Against All Defendants)

27. Plaintiffs reallege and incorporate herein by reference to each and every allegation contained in Paragraphs 1 through 26, and all its subparts, inclusive, as set forth hereinabove.

28. Plaintiffs are informed and believe, and based upon such information and belief allege, that in doing all of the things herein mentioned, defendants, and each of them, violated plaintiffs rights as codified under 42 U.S.C. Section 1985(3), intentionally discriminating against them under the guarantees of said statute based upon their racial and national origin.

29. As a proximate result of the foregoing acts of defendants, and each of them, plaintiffs have suffered and continue to suffer extreme economic and non-economic damages, including but not limited to severe emotional distress and unreasonable intereference [*sic*] with their motel business according to proof at trial. Plaintiffs are informed and believe, and based upon such information and belief alleges, that the damages they have suffered and continue to incur is at least $1,000,000 per each individually named Plaintiff; are entitled to punitive and exemplary damages for the conduct of the individually named defendants and for appropriate injunctive relief. All of the individually named Plaintiffs and LALA are entitled to their reasonable attorneys fees under 42 U.S.C. section 1988.

WHEREFORE, Plaintiffs pray judgment against Defendants, and each of them, as follows:

FIRST CLAIM FOR RELIEF

1. For damages according to proof at trial but not less than $1,000,000.00 per each individually named Plaintiff;

2. For declaratory and injunctive relief;

3. For punitive damages against the individual defendants;

4. For attorney's fees pursuant to 42 U.S.C. Section 1988;

SECOND CLAIM FOR RELIEF

5. For damages according to proof at trial but not less than $1,000,000.00 for each individually named Plaintiff;

6. For injunctive relief;

7. For punitive damages against the individual defendants;

8. For attorney's fees pursuant to 42 U.S.C. Section 1988;

THIRD CLAIM FOR RELIEF

9. For damages according to proof at trial but not less than $1,000,000.00 for each individually named Plaintiff;

10. For injunctive relief;

11. For punitive damages against the individual defendants;

12. For attorney's fees pursuant to 42 U.S.C. Section 1988;

FOR ALL CLAIMS FOR RELIEF

13. For costs of suit; and

14. For such other and further relief as the Court deems just and proper.

DATED: August 19, 2003

LAW OFFICES OF FRANK A. WEISER

By: /s/ Frank A. Weiser

FRANK A. WEISER, Attorney for Plaintiff LOS ANGELES LODGING ASSOCIATION and All Individually Named Plaintiffs

DEMAND FOR JURY TRIAL

Plaintiffs hereby demand a jury trial pursuant to F.R.C.P. 38.

DATED: August 19, 2003

LAW OFFICES OF FRANK A. WEISER

By: /s/ Frank A. Weiser

FRANK A. WEISER, Attorney for Plaintiff LOS ANGELES LODGING ASSOCIATION and All Individually Named Plaintiffs

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RAMESHBHAI C. BHAKTA,
MANHARBHAI G. BHAKTA,
SAROJBEN B. BHAKTA,
RAJENDRAKUMAR N. BHAKTA
and MANJULA BHAKA

UNITED STATES DISTRICT COURT
CENTRAL DISTRICT OF CALIFORNIA

No. CV04-2192 DDP (Ex)

FILED

RAMESHBHAI C. BHAKTA, individually and doing business as the Boulevard Motel; MANHARBHAI G. BHAKTA, individually and doing business as the Boulevard Motel; SAROJBEN B. BHAKTA; individually and doing business as the Boulevard Motel; RAJENDRAKUMAR N. BHAKTA; MANJULA BHAKA

Plaintiffs,

vs.

CITY OF LOS ANGELES, a municipal corporation; CITY OF LOS ANGELES POLICE CHIEF WILLIAM BRATTON; CITY OF LOS ANGELES POLICE OFFICER MICHAEL SHEA; CITY OF LOS ANGELES POLICE OFFICER YVONNE ENRIQUEZ; CITY OF LOS ANGELES POLICE

OFFICER STINSON BROWN; CITY OF LOS ANGELES POLICE OFFICER ARELLANO, Badge No. 33002, sued as DOE 1; CITY OF LOS ANGELES POLICE OFFICER DREW, Badge No. Unknown, sued as DOE 2; CITY OF LOS ANGELES POLICE OFFICER PIGAO, Badge No. Unknown, sued as DOE 3; CITY OF LOS ANGELES POLICE OFFICER BARRIOS, Badge No. Unknown, sued as DOE 4; CITY OF LOS ANGELES POLICE OFFICER TULLER, Badge No. Unknown, sued as DOE 5; and DOES 6 THROUGH 10 INCLUSIVE,

Defendants.

COMPLAINT FOR DAMAGES; INJUNCTIVE RELIEF; STATE SUPPLEMENTAL CLAIMS

(VIOLATION OF FEDERAL CIVIL RIGHTS)

DEMAND FOR JURY TRIAL

DOCKETED ON CM
APR – 5 2004
BY /s/ 001

FILED

Plaintiffs, RAMESHBHAI C. BHAKTA, individually and doing business as the Boulevard Motel; MANHARBHAI G. BHAKTA, individually and doing business as the Boulevard Motel, SAROJBEN D. BHAKTA, individually and doing business as the Boulevard Motel; RAJENRAKUMAR N. BHAKTA and MANJULA BHAKTA, (collectively "Plaintiffs"), as a Complaint against Defendants, state and allege as follows:

JURISDICTION AND VENUE

1. Jurisdiction of the federal court exists pursuant to 28 U.S.C. Section 1331 and 28 U.S.C.

Section 1343 (a)(3). This action, which arises under the laws and Constitution of the United States, specifically, the First, Fourth and Fourteenth Amendments, involves violations of federal law pursuant to 42 U.S.C. Section 1983 and the United States Constitution under said provisions.

2. Venue is proper in this District pursuant to 28 U.S.C. Section 1391(b) in that Defendant CITY OF LOS ANGELES, is a public entity in this District, and the claims arose in this District.

PARTIES

3. Plaintiffs were at all times material herein the owners and operators of a motel named the Boulevard Motel ("Motel") located at 6919 South Figeuroa Street, Los Angeles, California. RAMESHBHAI C. BHAKTA, MANHARBHAI G. BHAKTA and SAROJBEN D. BHAKTA are the owners and operators of the motel. RAJENRAKUMAR N. BHAKTA and MANJULA BHAKTA are at all times material herein the on-site managers who reside at the motel.

4. Defendant CITY OF LOS ANGELES ("Defendant" or "City") is a municipal corporation organized and existing under the Constitution and laws of the State of California. LOS ANGELES POLICE CHIEF WILLIAM BRATTON ("Chief Bratton") was at all times material herein the Police Chief of the City of Los Angeles Police Department ("LAPD").

5. Defendants CITY OF LOS ANGELES POLICE OFFICER MICHAEL SHEA ("Officer Shea"), CITY OF LOS ANGELES POLICE

OFFICER YVONNE ENRIQUEZ ("Officer Enriquez"), CITY OF LOS ANGELES POLICE OFFICER STINSON BROWN ("Officer Brown") were at all times material herein police officers and employees of the LAPD.

6. Defendants CITY OF LOS ANGELES POLICE OFFICER ARELLANO, Badge No. 33002, sued as DOE 1 ("Officer Arellano"), CITY OF LOS ANGELES POLICE OFFICER DREW, Badge No. Unknown, sued as DOE 2 ("Officer Drew"); CITY OF LOS ANGELES POLICE OFFICER PIGAO, Badge No. Unknown, sued as DOE 3 ("Officer Pigao"); CITY OF LOS ANGELES POLICE OFFICER BARRIOS, Badge No. Unknown, sued as DOE 4 ("Officer Barrios") and CITY OF LOS ANGELES POLICE OFFICER TULLER, Badge No. Unknown, sued as DOE 5 ("Officer Tuller") were at all times material herein police officers and employees of the LAPD. At present, plaintiffs do not know the first names of said defendants and do not know the badge numbers for Officers Drew, Pigao and Barrios.

7. The true names and capacities, whether individual, corporate, associate or otherwise, herein named as DOES 1 through 10, and persons heretofore unknown involved in the actions taken against plaintiffs are unknown to plaintiffs at this time. Plaintiffs are informed and believe and based thereon allege that each of the DOE defendants is responsible in some manner for the occurrences herein referred to, and that plaintiffs' injuries and damages as herein alleged were proximately caused by those defendants. Plaintiffs sue said defendants by such fictitious names on the grounds that the true names and capacities of said defendants are

unknown to them at this time. Plaintiffs will amend this complaint as and when the true names and capacities of said DOE defendants are ascertained. Each reference in this complaint to "defendant," "defendants" or a specifically named defendant also refers to defendants sued under fictitious names.

BACKGROUND FACTS COMMON TO ALL CLAIMS

8. On August 17, 2002, Officers Drew and Arellano went to conduct a motel registration check pursuant to Los Angeles Municipal Code ("LAMC") 41.49. Without Plaintiffs consent, authorization of Plaintiffs, or an administrative or any other type of warrant or court order, Officers Drew and Arellano entered onto the motel and further entered where Plaintiffs Rajendrakumar N. Bhakta and Manjula Bhakta reside, and in their presence inspected and seized motel registration cards, threatening said plaintiffs with arrest. Plaintiff Rajendrakumar N. Bhakta was cited for violation of LAMC 41.49(b), failure to maintain a register, but such citation was eventually dismissed and no charges were filed.

9. On September 14, 2002, Officers Tuller and Arellano went to conduct a motel registration check pursuant to Los Angeles Municipal Code ("LAMC") 41.49. Without Plaintiffs consent, authorization of Plaintiffs, or an administrative or any other type of warrant or court order, Officers Tuller and Arellano entered onto the motel and further entered where Plaintiffs Rajendrakumar N. Bhakta and Manjula Bhakta reside, and in their presence inspected and seized motel registration cards, threatening said plaintiffs with arrest.

Plaintiff Rajendrakumar N. Bhakta was cited for violation of LAMC 41.49(b), failure to maintain a register, and said plaintiff was eventually charged with a misdemeanor to which he pleaded no contest in the Los Angeles Superior Court and paid a fine and placed on summary probation.

10. On October 31, 2002, Officer Arellano went to conduct a motel registration check pursuant to Los Angeles Municipal Code ("LAMC") 41.49. Without Plaintiffs consent, authorization of Plaintiffs, or an administrative or any other type of warrant or court order, Officer Arellano entered onto the motel and further entered where Plaintiffs Rajendrakumar N. Bhakta and Manjula Bhakta reside, and in their presence inspected and seized motel registration cards, once again threatening said plaintiffs with arrest. Plaintiff Rajendrakumar N. Bhakta was cited for violation of LAMC 41.49(b), failure to maintain a register, and said plaintiff was eventually charged with a misdemeanor which was dismissed in reference the plea of no contest in the Los Angeles Superior Court and paid a fine and placed on summary probation.

11. On February 24, 2002, Officers Barrios and Arellano went to conduct a motel registration check pursuant to Los Angeles Municipal Code ("LAMC") 41.49. Once again, without Plaintiffs consent, authorization of Plaintiffs, or an administrative or any other type of warrant or court order, Officers Barrios and Arellano entered onto the motel and further entered where Plaintiffs Rajendrakumar N. Bhakta and Manjula Bhakta reside, and in their presence inspected and seized motel registration cards. Plaintiff Rajendrakumar

N. Bhakta was cited for violation of LAMC 41.49(b), failure to maintain a register, and said plaintiff was eventually charged with an infraction to which he was ordered to pay a monetary fine.

12. In taking the said actions stated in paragraphs 8-11 above, Officers Drew, Tuller and Arellano did so in accordance with the express authority of LAMC 41.49 which authorizes warantless inspections of motels regarding motel registration at any time of the day and night, and with the express authority, knowledge and ratification of the other named defendants, including Officer Pigao who participated with Officer Arellano in the monitoring and investigation of the motel.

13. In taking the said actions stated in paragraphs 8-12 above, at no time has Plaintiff Manjula Bhakta been convicted of any violations of the LAMC and there are no charges pending against her.

14. In taking the said actions stated in paragraphs 8-12 above, at no time have Plaintiffs Rameshbhai C. Bhakta, Manharbhai G. Bhakta and Sarojben D. Bhakta been charged or convicted of any violations of the LAMC and there are no charges pending against them.

15. On May 21, 2003, the plaintiffs MANHARBHAI G. BHAKTA, SAROJBEN B. BHAKTA, RAJENDRAKUMAR N. BHAKTA and MANJULA BHAKA filed suit against the defendants alleging violation of their civil rights under 42 U.S.C. Section 1983 for the actions generally described described [*sic*] in paragraphs 8-11 above and

challenging the enforcement of LAMC 41.49 against them.

16. Said plaintiffs were joined in the lawsuit by appromixately 40 members of the LOS ANGELES LODGING ASSOCIATION ("LALA") and said plaintiffs are the lead plaintiffs in the lawsuit.

17. The matter has been set for trial and is now pending in the United States District Court for the Central District of California. The case is entitled *Rajendrakumar N. Bhakta, et al. v. City of Los Angeles, et al.*; Case No. CV 03-03610 DSF(AJWx).

18. Immediately after filing and serving the lawsuit referred to in paragraphs 15-16 above, defendants, and each of them have increased and actually enforced LAMC 41.49 in an unconstitutional manner against said plaintiffs, and have further actually used the claimed evidence gathered by way of such unconstitutuional [*sic*] actions in a civil abatement proceeding against plaintiffs filed in the Los Angeles Superior Court entitled *The People of the State of California v. Rameshbhai C. Bhakta, et al.*; Case No. BC311832 ("State Court Action"). A copy of the complaint filed on March 9, 2004 is attached hereto as Exhibit "A"

19. In addition defendants, and each of continue to come onto the motel property and inspect the motel at all times of the day and night without plaintiffs consent, authorization, warrant or court order and in doing so have unreasonably interefered [*sic*] and continue to unreasonably interefere [*sic*] with plaintiffs operation of their motel business.

20. Said actions described in paragraphs 15-19 which are the predicate facts that have emerged since the filing of the last lawsuit are the sole nucleus of facts that plaintiffs seek relief in this action as the previous actions described in paragraphs 8-14 are being litigated in the previously filed lawsuit. Paragraphs 8-14 are used in this lawsuit as background historical facts.

Based on the above facts, Plaintiffs allege the following claims:

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FIRST CLAIM FOR RELIEF

(Violation of Civil Rights Under 42 U.S.C. Section 1983 by Plaintiffs Against All Defendants)

21. Plaintiffs reallege and incorporate herein by reference to each and every allegation contained in Paragraphs 1 through 20, and all its subparts, inclusive, as set forth hereinabove.

22. Plaintiffs are informed and believe, and based upon such information and belief allege, that in doing all of the things herein mentioned, defendants, and each of them, acted under color of the statutes, regulations, customs and usages of the City of Los Angeles and the State of California for purposes of "state action" under 42 U.S.C. Section 1983.

23. Plaintiffs are further informed and believe, and based upon such information and belief allege, that by taking the actions hereinabove alleged in paragraphs 15 thru 19 above, defendants, and each of them, violated and continue to threaten to violate the constitutional and civil rights of Plaintiffs, in particular to their rights under the First Amendment Petition Clause by unconstitutionally retaliating against plaintiffs for filing a petition for their grievances against the defendants; the Fourth Amendment as incorporated by the Fourteenth Amendment of the United States Constitution to be free from unreasonable searches and seizures of their person or property; and to their right to their right to their rights [*sic*] under the procedural component of the Due Process Clause of the United States Constitution.

24. Defendant City in engaging in the above described conduct, is liable as it acted according to official policy, custom and practice of the City. The individual defendants are not entitled to qualified immunity as they violated plaintiffs' constitutional and civil rights, and in doing so violated clearly established law in a manner that was unreasonable under the circumstances.

25. As a proximate result of the foregoing acts of defendants, and each of them, plaintiffs have suffered and continue to suffer extreme economic and non-economic damages, including but not limited to severe emotional distress and unreasonable intereference [*sic*] with their motel business. Plaintiffs are informed and believe, and based upon such information and belief alleges, that the damages he has suffered and continue to incur is

in a sum in excess of $5,000,000.00 and are also entitled to their reasonable attorneys fees under 42 U.S.C. section 1988.

SECOND CLAIM FOR RELIEF
(Violation of Civil Rights Under 42 U.S.C. Section 1985(3) by Plaintiffs Against Defendant)

26. Plaintiffs reallege and incorporate herein by reference to each and every allegation contained in Paragraphs 1 through 20, and all its subparts, inclusive, as set forth hereinabove.

27. In taking he [*sic*] actions described in paragraphs 15-19 above, defendants, and each of them, have not enforced LAMC 41.49 in a similar manner to other motel owners and operators in the City of Los Angeles who are not Asian-Indian and of a minority status as are plaintiffs and the members of LALA.

28. Plaintiffs are informed and believe, and based upon such information and belief allege, that in doing all of the things herein mentioned, Defendant violated Plaintiffs rights as codified under 42 U.S.C. Section 1985(3), intentionally discriminating against them in under the guarantees of said statute based upon their racial and national origin.

29. As a proximate result of the foregoing acts of Defendant, plaintiffs have suffered and continue to suffer extreme hardship and damages, which damages include, but is not limited to, severe emotional distress. Plaintiffs are informed and believes, and based upon such information and belief

alleges, that the damages they have suffered and continue to incur will be according to proof at trial but not less than $5,000,000.00 and that they are also entitled to declaratory and injunctive relief and to punitive damages against the Defendant and to their reasonable attorneys fees under 42 U.S.C. section 1988.

THIRD CLAIM FOR RELIEF
(Removal of State Petition Under 28 U.S.C. Section 1443(1) and 28 U.S.C. Section 1367 by Plaintiffs Against Defendant)

30. Plaintiffs reallege and incorporate herein by reference to each and every allegation contained in Paragraphs 1 through 29, and all its subparts, inclusive, as set forth hereinabove.

31. Plaintiffs hereby remove to this Court the state court action filed by defendant City of Los Angeles in the name of the People of the State of California in the Superior Court of the State of California for the County of Los Angeles entitled *The People of the State of California v. Rameshbhai C. Bhakta, et al.*; Case No. BC311832 and attached hereto as Exhibit "A"

32. The actions taken by the defendant as set forth above and actionable under the equal civil rights statutes of 42 U.S.C. Sections 1983 and 1985(3) set forth in the first two claims for relief confers upon this Court subject matter jurisdiction to remove the state court action directly pursuant to 28 U.S.C. Section 1443(1) which states that:

> "Any of the following civil actions or criminal prosecutions, commenced in State court may be removed by the defendant to the district court of the United States for the district and division embracing the place wherein it is pending:
>
> (1) Against any person who is denied or cannot enforce in the courts of such State a right under any law providing for the equal civil rights of citizens of the United States, or of all persons within the jurisdiction thereof." (emphasis added).

33. Independent of the subject matter jurisdiction to remove the state court action under 28 U.S.C. Section 1443(1), subject matter jurisdiction exists to remove exists under 28 U.S.C. Section 1367 and existing United States Supreme Court precedent.

34. This Court may not remand the removed state court action back to state court sua sponte_for an alleged nonjurisdictional procedural defect under 28 U.S.C. Section 1447(c). See *Kelton Arms Condominium Owners Ass., Inc. v. Homestead Insurance Co.*, 2003 DJDAR 11403 (9th Cir. 2003).

35. This Court may not remand the removed state court action back to state court sua sponte_for an alleged jurisdictional defect under 28 U.S.C. Section 1443(1). See *Morris v. Gilmer*, 129 U.S. 315, 326-329 (1889); see also *Prakash v. American Univ.*, 727 F.2d 1174, 1179-80 (D.C. 1984); *In re Continental Casualty Co.*, 29 F.3d 292, 294-295 (7th Cir. 1994).

36. For the actions taken by the Defendant as described in paragraphs 1-29 above, Plaintiffs are entitled that the removed action be denied and that judgment be awarded in favor of plaintiffs and that defendant take nothing.

WHEREFORE, Plaintiffs pray judgment against Defendants, and each of them, as follows:

FIRST CLAIM FOR RELIEF

1. For damages according to proof at trial but not less than $5,000,000.00;
2. For declaratory and injuntive [sic] relief;
3. For punitive damages against the individual defendants
4. For attorney's fees pursuant to 42 U.S.C. Section 1988;

SECOND CLAIM FOR RELIEF

5. For damages according to proof at trial but not less than $5,000,000.00;
6. For declaratory and injuntive [sic] relief;
7. For punitive damages against the individual defendants;
8. For attorney's fees pursuant to 42 U.S.C. Section 1988;

THIRD CLAIM FOR RELIEF

9. For a denial of the relief sought in the removed state court action and that judgment be awarded in favor of Plaintiffs and that Defendant City of Los Angeles

acting on behalf of the People of the State of California take nothing by said complaint;

FOR ALL CLAIMS FOR RELIEF

10. For costs of suit; and

11. 11. For such other and further relief as the Court deems just and proper.

DATED: March 30, 2004

LAW OFFICES OF FRANK A. WEISER

By: /s/ Frank A. Weiser

FRANK A. WEISER, Attorney for Plaintiffs RAMESHBHAI C. BHAKTA, MANHARBHAI G. BHAKTA, SAROJBEN B. BHAKTA, RAJENDRAKUMAR N. BHAKTA and MANJULA BHAKA

DEMAND FOR JURY TRIAL

Plaintiffs hereby demand a jury trial pursuant to F.R.C.P 38.

DATED: March 30, 2004

LAW OFFICES OF FRANK A. WEISER

By: /s/ Frank A. Weiser

FRANK A. WEISER, Attorney for Plaintiffs RAMESHBHAI C. BHAKTA, MANHARBHAI G. BHAKTA, SAROJBEN B. BHAKTA, RAJENDRAKUMAR N. BHAKTA and MANJULA BHAKA

EXHIBIT "A"

ROCKARD J. DELGADILLO, City Attorney
Asha Greenberg, Supervising Deputy City Attorney
State Bar #107375
Amy Brothers, Deputy City Attorney
State Bar #206283
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Los Angeles, California 90025
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Attorneys for Plaintiff

SUPERIOR COURT OF THE STATE OF CALIFORNIA
COUNTY OF LOS ANGELES, CENTRAL DISTRICT

Case No. BC311832

CONFORMED COPY
OF ORIGINAL FILED
Los Angeles Superior Court
MAR 09 2004
John A. Clarke, Executive Officer/Cerk
By _____Deputy
SUE GABB

THE PEOPLE OF THE STATE OF CALIFORNIA

Plaintiff,

vs.

RAMESHBHAI C. BHAKTA, individually and doing business as the Boulevard Motel; MANHARBHAI G. BHAKTA, individually and doing business as the Boulevard Motel; SAROJBEN D. BHAKTA,

individually and doing business as the Boulevard Motel; and Does 1 through 20, inclusive,

Defendants.

COMPLAINT FOR (1) RED-LIGHT ABATEMENT AND INJUNCTIVE RELIEF (Penal Code sections 11225-11235) and (2) UNFAIR COMPETITION (Business and Professions Code section 17200 *et seq.*)

[Unlimited Action]

PLAINTIFF, THE PEOPLE OF THE STATE OF CALIFORNIA, alleges as follows:

THE PARTIES

1. This action is brought and prosecuted by Plaintiff, People of the State of California ("Plaintiff), for the purpose of enjoining and abating a public nuisance which exists at the Boulevard Motel located at 6919 South Figueroa Street, Los Angeles, California.

2. The Property with the address of 6919 South Figueroa Street, Los Angeles, California 90003 is more specifically described as:

Lots 163 and 164 of Burke Brothers Figueroa Street Subdivision, in The County of Los Angeles, State of California, as per Map recorded in Book 5, page 189 of Maps, of the records of The County Recorder of said County, Assessor's parcel number 6013-022-027, also known as 6919 S. Figueroa Street, with a mailing address of 6919 S. Figueroa Street, Los Angeles, California 90003.

3. Defendant Rameshbhai Bhakta, individually and doing business as Boulevard Motel;

Manharbhai Bhakta, individually and doing business as Boulevard Motel; and Sarojben Bhakta, individually and doing business as Boulevard Motel (hereinafter "the Defendants"), are the owners of the Boulevard Motel, located at 6919 South Figueroa Street, Los Angeles, California (hereinafter the "Property") and at all times herein mentioned have acted in such capacity.

4. Rameshbhai Bhakta purchased 6919 South Figueroa on October 15, 2001. On October 21, 2001, Rameshbhai Bhakta filed a Fictitious Business Name Statement with the County Recorder, to wit: that Rameshbhai Bhakta was doing business as the Boulevard Motel.

5. On February 15, 2002, Manharbhai Bhakta and Sarojben Bhakta commenced leasing 6919 S Figueroa from Rameshbhai Bhakta for a fifteen year term. On April 2, 2002, Manhabhai Bhakta and Sarojben Bhakta filed a Fictitious Business Name Statement, with the County Recorder, to wit: that Manharbhai and Sarojben Bhakta were doing business as the Boulevard Motel.

6. The Defendants operate the Boulevard Motel at 6919 South Figueroa. The violations of law described herein have been and are now being committed within the City and County of Los Angeles, State of California.

7. The true names and capacities of Defendants sued herein as Does 1 through 20, inclusive, are unknown to Plaintiffs, who therefore sues said Defendants by such fictitious names. When the true names and capacities of said Defendants have been ascertained, Plaintiffs will

ask leave of the court to amend this complaint and to insert in lieu of such fictitious names the true names and capacities of said fictitiously named Defendants.

FIRST CAUSE OF ACTION

(For Red Light Abatement - Penal Code section 11225 *et seq.*
Against All Defendants and DOES 1 through 20)

8. Plaintiff hereby incorporates by reference paragraphs 1 through 7 of this Complaint and makes them part of the First Cause of Action, as if fully set out herein.

9. This action is brought and prosecuted for the purpose of enjoining and abating a red light nuisance, as defined in California Penal Code section 11225, *et seq.*, which exists at 6919 South Figueroa Street, Los Angeles, California.

10. Defendants have directly or indirectly conducted, maintained or permitted the Property to be used, from an exact date unknown but at least since June 2001, for the purposes of prostitution.

11. The buildings at the Property are places where acts of prostitution are held or occur.

12. From June 2001 to the present, law enforcement officers observed prostitution activity occuring [*sic*] at the Property or made prostitution related arrests involving the Property at least thirty-one (31) times.

13. The prostitution related activities observed by law enforcement includes eighteen (18) instances in which prostitutes directed customers to the Boulevard Motel for prostitution activity; at least

three (3) instances in which managers and operators of the Motel rented rooms to customers who clearly stated they were there for prostitution activities; and at least four (4) instances in which managers of the Motel did not require guests to fill out the required registration cards in order to rent a room at the Motel.

14. The Property has developed a reputation in the community as a location where prostitution takes place.

15. The activity set forth in paragraphs 9-14 has been a continuous and ongoing prostitution nuisance, under Penal Code sections 11225 *et seq.*, upon the Property for more than two years.

16. Defendants, and each of them, have directly or indirectly conducted, maintained or permitted the nuisance described in paragraphs 9 14.

17. Therefore, the nuisance existing at the Property must be abated and prevented in accordance with Penal Code sections 11225-11235.

18. Plaintiff has no adequate remedy at law, and unless Defendants and each of them are enjoined and restrained by order of this Court, Defendants will continue to permit a narcotics nuisance to exist at the Property.

SECOND CAUSE OF ACTION

(For Unfair Competition Violation of Business and Professions Code §17200, *et seq.*
Against All Defendants and DOES 1 through 20)

19. Plaintiff incorporates herein by reference paragraphs 1-18 of this Complaint, as though fully set forth at length herein.

20. By acting as alleged in paragraphs 12-16, inclusive, Defendants have engaged in unfair business practices, within the meaning of and in violation of California Business and Professions Code §17200, *et seq.*, with respect to the Property. Such unlawful business practices include but are not limited to violations of 11225, *et seq.* of the Penal Code, the Red Light Abatement Act; section 316 of the Penal Code; section 41.49 of the Los Angeles Municipal Code; renting rooms on an hourly or short term basis; incomplete or missing registration cards.

21. Specifically, the Defendants, and each of them, as owners, lessors, lessees, operators, or managers of the Boulevard Motel, which is doing business at the Property, are presently, and have been since at least June 2001, directly or indirectly, maintaining and/or permitting the use of the Boulevard Motel and the site of the Property, its grounds, buildings and premises for prostitution, constituting a nuisance thereon and therein, in violation of section 11225 *et seq.* of the Penal Code, the Red Light abatement Act.

22. By the misconduct alleged herein, the Defendants unfairly detract from the quality of life of those neighbors to the Property. The Defendants

unfairly contribute to the crime and disorderly conduct within the City of Los Angeles, and are unjustly enriched to the extent that the Defendants fail to pay the costs of complying with their obligations to maintain the Property free of prostitution nuisance activity. These unfair business practices, as alleged herein, place the Defendants at an unfair advantage with respect to their competitors who do follow the law.

23. Plaintiff has no adequate remedy at law, and unless Defendants, and each of them are enjoined and restrained by order of this Court, Defendants will continue to commit unlawful business practices or acts, thereby causing irreparabale [*sic*] injury and harm to the public's welfare.

WHEREFORE, PLAINTIFFS PRAY THAT THIS COURT ORDER, ADJUDGE AND DECREE AS FOLLOWS:

AS TO THE FIRST CAUSE OF ACTION

1. That the court grant a preliminary injunction and permanent injunction in accordance with Section 11225 *et seq.* of the Penal Code, enjoining and restraining Defendants and their agents, officers, employees and anyone acting on their behalf, from maintaining, operating, or occupying the Property as a nuisance; or permitting prostitution to take place on the Property.

2. That Defendants and their agents, officers, employees and anyone acting on their behalf be ordered to make remedial, capital improvements

to the Property that will contribute towards abating the nuisance.

3. That the Property, together with the fixtures and moveable property therein and thereon, constitutes a public nuisance and be permanently abated as such in accordance with Section 11230 of the Penal Code.

4. That Defendants, their agents, officers, employees, and anyone acting on their behalf, and their heirs and assignees, be perpetually enjoined from operating, conducting, using, occupying, or in any way permitting the use of the Property as a public nuisance.

5. That as part of the Judgment, an Order of Abatement be issued, and the Property be closed for a period of one year, not to be used for any purpose, and be under the control and custody of this court for said period of time.

6. That Defendants, and each of them, be assessed a civil penalty in an amount not to exceed twenty-five thousand dollars ($25,000.00).

7. That all fixtures and moveable property used in conducting, maintaining, aiding or abetting the nuisance at the Property be removed by the Los Angeles Police Department and sold in the manner provided for the sale of chattels under execution. Said fixtures and property shall be inventoried and a list prepared and filed with this court.

8. There shall be excepted from said sale such property, title to which is established in some third party not a defendant, nor agent, officer,

employee or servant of any defendant in this proceeding.

9. That the proceeds from said sale be deposited with this court for payment of the fees and costs of sale. Such costs may occur in closing said premises and keeping them closed, removal of said property, and Plaintiff's costs in the action, including attorney's fees, and such other costs as the court shall deem proper.

10. If the proceeds of the sale do not fully discharge all such costs, fees and allowances, the building and place shall also be sold under execution issued upon the order of the court or judge and the proceeds of such sale shall be applied in like manner.

11. Any excess monies remaining after payment of approved costs shall be delivered to the owner of said property. Ownership shall be established to the satisfaction of the court.

AS TO THE SECOND CAUSE OF ACTION

12. That Defendants and their agents, officers, employees and anyone acting on their behalf be declared in violation of Business and Professions Code §17200, *et seq*.

13. That Defendants and their agents, officers, employees and anyone acting on their behalf be permanently enjoined from maintaining, operating, or permitting any act or unfair or unlawful competition in violation of Business and Professions Code §17200, *et seq*.

14. That the Court grant a preliminary and permanent injunction against Defendants and their agents, officers, employees and anyone acting on

their behalf abating the continuation of the unfair or unlawful competition as heretofore described on the Property and ordering that the conditions and activities, as heretofore described, be corrected and eliminated from the Property.

15. That pursuant to Business and Professions Code §17200, *et seq.*, each of the defendants and their agents, officers, employees and anyone acting on their behalf be assessed a civil penalty of Two Thousand Five Hundred Dollars ($2,500.00), for each and every act of unfair and unlawful competition, taking into account each time the Defendants violate 11225 *et seq.* of the Penal Code; 316 of the Penal Code and 41.49 of the Los Angeles Municipal Code.

16. That pursuant to Business and Professions Code §17203, that Defendants and their agents, officers, employees and anyone acting on their behalf be ordered to disgorge, forfeit, relinquish, or surrender all the monies received from allowing, permitting, or maintaining violations of 11225 *et seq.* of the Penal Code, 316 of the Penal Code and 41.49 of the Los Angeles Municipal Code to exist at the Property.

ON ALL CAUSES OF ACTION

17. That Plaintiffs recover the costs of this action, including investigative costs and attorney's fees;

18. That the recordation of any judgment in this action constitute a lien prior to any pre-existing liens held by Defendants in connection with the Property;

19. That the Defendants be required to obtain the Court's prior approval before transferring, conveying, or encumbering, for consideration or otherwise, any portion of the Property;

20. That the Defendants be ordered to immediately notify any transferees, purchasers, commercial lessees, or other successors in interest to the subject Property of the existence and application of any temporary restraining order, preliminary injunction, or permanent injunction to all prospective transferees, purchasers, commercial lessees, or other successors in interest, *before* entering into any agreement to sell, lease or transfer the Property for consideration or otherwise, all or any portion of the Property that is the subject of this action;

21. That the Defendants be ordered to immediately give a complete, legible copy of any temporary restraining order and preliminary and permanent injunctions to all prospective transferees, purchasers, commercial lessees, or other successors in interest to the subject Property;

22. That the Defendants be ordered to immediately request and procure signatures from all prospective transferees, purchasers, commercial lessees, or other successors in interest to the subject Property, which acknowledges his/her respective receipt of a complete, legible copy of any temporary restraining order, preliminary and permanent injunction, and deliver a copy of such acknowledgment to the Los Angeles City Attorney's Office, c/o Deputy City Attorney Amy Brothers; and

23. That Plaintiffs be granted such other and further relief as the Court deems just and proper.

DATED: March 9, 2004

Respectfully submitted,

ROCKARD J. DELGADILLO, City Attorney
ASHA GREENBERG, Supervising Deputy City Attorney

By: /s/ Amy Brothers (SBN 204465)

AMY BROTHERS, Deputy City Attorney, Attorneys for Plaintiffs, THE PEOPLE OF THE STATE OF CALIFORNIA

FRANK A. WEISER, (Bar No. 89780)
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Attorney for Plaintiffs
NARANJIBHAI PATEL and
RAMILABEN PATEL

UNITED STATES DISTRICT COURT
CENTRAL DISTRICT OF CALIFORNIA

CV05 1571 GAF JWJx

FILED
2005 MAR-2 PM 3:45

NARANJIBHAI PATEL; RAMILABEN PATEL,

Plaintiffs,

vs.

CITY OF LOS ANGELES, a municipal corporation; CITY OF LOS ANGELES POLICE CHIEF WILLIAM BRATTON; CITY OF LOS ANGELES POLICE OFFICER LOPEZ, Badge No. 31911 No. 33002, sued as DOE 1; CITY OF LOS ANGELES POLICE OFFICER SANCHEZ, Badge No. 32705, sued as DOE 2; CITY OF LOS ANGELES POLICE OFFICER MARISCO, Badge No. 32006, sued as DOE 3; CITY OF LOS ANGELES POLICE OFFICER GALLEGOS, Badge. No. 33847, sued as DOE 4; CITY OF LOS ANGELES POLICE OFFICER KOVAL, Badge No. 32668, sued as DOE 5; CITY OF LOS ANGELES POLICE OFFICER VARGAS, Badge No. 31332, sued as DOE 6; CITY

OF LOS ANGELES POLICE OFFICER DAVILA, Badge No. 31802, sued as DOE 7; and DOES 8 THROUGH 10 INCLUSIVE,

Defendants.

COMPLAINT FOR DAMAGES AND DECLARATORY AND INJUNCTIVE RELIEF

[Violation of Federal Civil Rights]

DEMAND FOR JURY TRIAL

DOCKETED ON CM
MAR – 8 2005
BY _____ 001

Plaintiffs NARANJIBHAI PATEL and RAMILABEN PATEL ("Plaintiffs" or collectively "Patel") as a Complaint against Defendants, state and allege as follows:

JURISDICTION AND VENUE

1. Jurisdiction of the federal court exists pursuant to 28 U.S.C. Section 1331 and 28 U.S.C. Section 1343(a)(3). This action, which arises under the laws and Constitution of the United States, specifically, the Fourth and Fourteenth Amendments, involves violations of federal law, actionable pursuant to 42 U.S.C. Section 1983.

2. Venue is proper in this District pursuant to 28 U.S.C. Section 1391(b) in that Defendant CITY OF LOS ANGELES ("City"), is a public entity in this District, the Individual Defendants are employees of the City and reside in this District, and the claims arose in this District.

PARTIES

3. Plaintiffs, who are husband and wife were at all times material herein the owners and operators of a motel named the Rio Palace Motor Inn (the "Motel") located at 10424 South Broadway, Los Angeles, California 90003. Plaintiffs are the on-site managers of the Motel who reside at the motel.

4. Defendant CITY OF LOS ANGELES ("Defendant" or "City") is a municipal corporation organized and existing under the Constitution and laws of the State of California.

5. Defendant CITY OF LOS ANGELES POLICE CHIEF WILLIAM BRATTON ("Chief Bratton") was at all times material herein the Police Chief of the City of Los Angeles Police Department ("LAPD"). Chief Bratton is sued in his individual and official capacity.

6. Defendants CITY OF LOS ANGELES POLICE OFFICER LOPEZ, Badge No. 31911, sued as DOE 1 ("Officer Lopez"), CITY OF LOS ANGELES POLICE OFFICER SANCHEZ, Badge No. Sanchez, sued as DOE 2 ("Officer Sanchez"); CITY OF LOS ANGELES POLICE OFFICER MARISCO, Badge No. 32006, sued as DOE 3 ("Officer Marisco"); CITY OF LOS ANGELES POLICE OFFICER GALLEGOS, Badge No. 33847, sued as DOE 4 ("Officer Gallegos"); CITY OF LOS ANGELES POLICE OFFICER KOVAL, Badge No. 32668, sued as DOE 5 ("Officer Koval"); CITY OF LOS ANGELES POLICE OFFICER VARGAS, Badge No. 31332, sued as DOE 6 ("Officer Vargas"); and CITY OF LOS ANGELES POLICE OFFICER

DAVILA, Badge No. 31802, sued as DOE 7 ("Officer Davila") were at all times material herein police officers and employees of the LAPD. At present, plaintiffs do not know the first names of said defendants.

7. The true names and capacities, whether individual, corporate, associate or otherwise, herein named as DOES 8 through 10, and persons heretofore unknown involved in the actions taken against plaintiffs are unknown to plaintiffs at this time. Plaintiffs are informed and believe and based thereon allege that each of the DOE defendants is responsible in some manner for the occurrences herein referred to, and that plaintiffs' injuries and damages as herein alleged were proximately caused by those defendants. Plaintiffs sue said defendants by such fictitious names on the grounds that the true names and capacities of said defendants are unknown to them at this time. Plaintiffs will amend this complaint as and when the true names and capacities of said DOE defendants are ascertained. Each reference in this complaint to "defendant," "defendants" or a specifically named defendant also refers to defendants sued under fictitious names.

BACKGROUND FACTS COMMON TO ALL CLAIMS

8. On March 4, 2003, Officers Marisco, Lopez and Sanchez conducted a motel registration check at the Motel pursuant to Los Angeles Municipal Code ("LAMC") 41.49. Without plaintiffs [*sic*] consent, authorization of said plaintiffs, or an administrative or any other type of warrant or court

order, these officers, and each of them, entered onto the motel and further entered where plaintiffs reside, and in the course of the inspection, inspected and seized motel registration cards, and arrested and cited Plaintiff Ramilaben Patel for violation of LAMC 41.49(b), failure to maintain a register, but such citation was eventually dismissed and no charges were filed.

9. On September 9, 2003, Officers Gallegos, Koval and Marisco conducted a motel registration check at the Motel pursuant to Los Angeles Municipal Code ("LAMC") 41.49. Without plaintiffs consent, authorization of said plaintiffs, or an administrative or any other type of warrant or court order, these officers, and each of them, entered onto the motel and further entered where plaintiffs reside, and in the course of the inspection, inspected and seized motel registration cards, and arrested and cited Plaintiff Naranjibhai Patel for violation of LAMC 41.49(b), failure to maintain a register, but such citation was eventually dismissed and no charges were filed.

10. On February 18, 2004, Officers Vargas and Davila were working in an undercover capacity and investigating motels in the area of the Motel for disorderly house violations. On said date, an undercover operation for disorderly house violations was conducted at the Motel by said officers. Without plaintiffs consent, authorization of said plaintiffs, or an administrative or any other type of warrant or court order, these officers, and each of them, entered onto the motel and further attempted to rent a room at the Motel, and without probable cause, arrested and cited Plaintiff Naranjibhai Patel for violation of

Penal Code 316, and in doing so entered where plaintiffs reside. Such citation was eventually dismissed and no charges were filed.

11. In taking the said actions stated in paragraphs 8-10 above, said officers, did so in accordance with the express authority of LAMC 41.49 which authorizes warantless [*sic*] inspections of motels regarding motel registration at any time of the day and night, and with the express authority, knowledge and ratification of the other named defendants. A certified copy of LAMC 41.49 is attached and incorporated herein as Exhibit "A"

12. Within the past sixth [*sic*] months of the filing of this Complaint, said defendants, and each of them, have actually enforced and threatened to continue to enforce in the near future LAMC 41.49, by conducting and authorizing warantless [*sic*] inspections of plaintiffs' Motel regarding motel registration; doing so at all times of the day and night, and with the express authority, knowledge and ratification of Chief Bratton and the City Council and other policymaking officials of the City; and in enforcing LAMC 41.49 have further threatened to use the claimed evidence gathered in any alleged civil or criminal abatement proceedings against plaintiffs. In doing so said defendants have unreasonably interefered [*sic*] with plaintiffs operation of their motel business.

Based on the above facts, plaintiffs allege the following claims:

FIRST CLAIM FOR RELIEF

(Violation of Civil Rights Under 42 U.S.C. Section 1983 by All Plaintiffs Against All Defendants)

13. Plaintiffs reallege and incorporate herein by reference to each and every allegation contained in Paragraphs 1 through 12, and all its subparts, inclusive, as set forth hereinabove.

14. Plaintiffs are informed and believe, and based upon such information and belief allege, that in doing all of the things herein mentioned, defendants, and each of them, acted under color of the statutes, regulations, customs and usages of the City of Los Angeles and the State of California for purposes of "state action" under 42 U.S.C. Section 1983.

15. Plaintiffs are further informed and believe, and based upon such information and belief allege, that by taking the actions hereinabove alleged in paragraphs 8 – 12 above, defendants, and each of them, violated and continue to threaten to violate the constitutional and civil rights of plaintiffs, in particular to their rights under the Fourth Amendment as incorporated by the Fourteenth Amendment of the United States Constitution to be free from unreasonable searches and seizures of their person or property; to their right to the equal protection of the laws under the Equal Protection Clause of the Fourteenth Amendment of the United States Constitution to be free from arbitrary discrimination in the enforcement of LAMC 41.49 whereby said

enforcement has been done on a pretextual basis by defendants, and each of them, in order to drive plaintiffs out of business, and that has not been so enforced against similarly situated persons; and to their rights under the Due Process Clause of the United States Constitution in the application of LAMC 41.49 as said ordinance is vague on its face and as applied to the plaintiffs, and independent of their constitutional rights under the Fourth Amendment violates their interests under the Due Process Clause.

16. Defendant City in engaging in the above-described conduct, is liable as it acted according to official policy, custom and practice of the City. The individual defendants are not entitled to qualified immunity as they violated plaintiffs' constitutional and civil rights, and in doing so violated clearly established law in a manner that was unreasonable under the circumstances.

17. As a proximate result of the foregoing acts of defendants, and each of them, plaintiffs have suffered and continue to suffer extreme economic and non-economic damages, including but not limited to severe emotional distress and unreasonable intereference [*sic*] with their motel business according to proof at trial. Plaintiffs are informed and believe, and based upon such information and belief alleges, that the damages they have suffered and continue to incur is at least $1,000,000 per each individually named Plaintiff; are entitled to punitive and exemplary damages for the conduct of the individually named defendants; and are also entitled to a declaration that LAMC 41.49 is unconstitutional in violation of plaintiffs'

constitutional rights as set forth in paragraph 15 above. The plaintiffs are entitled to their reasonable attorneys fees under 42 U.S.C. section 1988.

WHEREFORE, Plaintiffs pray judgment against Defendants, and each of them, as follows:

FIRST CLAIM FOR RELIEF

1. For damages according to proof at trial but not less than $1,000,000.00 per each individually named Plaintiff;
2. For declaratory and injunctive relief;
3. For punitive damages against the individual defendants;
4. For attorney's fees pursuant to 42 U.S.C. Section 1988;

FOR ALL CLAIMS FOR RELIEF

5. For costs of suit; and
6. For such other and further relief as the Court deems just and proper.

DATED: March 2, 2005

LAW OFFICES OF FRANK A. WEISER

By: /s/ Frank A. Weiser

FRANK A. WEISER, Attorney for Plaintiffs NARANJIBHAI PATEL and RAMILABEN PATEL

DEMAND FOR JURY TRIAL

Plaintiffs hereby demand a jury trial pursuant to F.R.C.P. 38.

DATED: March 2, 2005

LAW OFFICES OF FRANK A. WEISER

By: /s/ Frank A. Weiser

FRANK A. WEISER, Attorney for Plaintiffs NARANJIBHAI PATEL and RAMILABEN PATEL

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Attorney for Plaintiffs
NARANJIBHAI PATEL and
RAMILABEN PATEL

UNITED STATES DISTRICT COURT
CENTRAL DISTRICT OF CALIFORNIA

No. CV05-01571-DSF (AJWx)

FILED
2005 JUL -1 PM 1:26
CLERK, U.S. DISTRICT COURT
CENTRAL DIST. OF CALIF.
LOS ANGELES
BY /s/

NARANJIBHAI PATEL; RAMILABEN PATEL,

Plaintiffs,

vs.

CITY OF LOS ANGELES, a municipal corporation; CITY OF LOS ANGELES POLICE CHIEF WILLIAM BRATTON; CITY OF LOS ANGELES POLICE OFFICER LOPEZ, Badge No. 31911 No. 33002, sued as DOE 1; CITY OF LOS ANGELES POLICE OFFICER SANCHEZ, Badge No. 32705, sued as DOE 2; CITY OF LOS ANGELES POLICE OFFICER MARISCO, Badge No. 32006, sued as DOE 3; CITY OF LOS ANGELES POLICE

OFFICER GALLEGOS, Badge No. 33847, sued as DOE 4; CITY OF LOS ANGELES POLICE OFFICER KOVAL, Badge No. 32668, sued as DOE 5; CITY OF LOS ANGELES POLICE OFFICER VARGAS, Badge No. 31332, sued as DOE 6; CITY OF LOS ANGELES POLICE OFFICER DAVILA, Badge No. 31802, sued as DOE 7; and DOES 8 THROUGH 10 INCLUSIVE,

Defendants.

FIRST AMENDED COMPLAINT FOR DAMAGES AND DECLARATORY AND INJUNCTIVE RELIEF

[Violation of Federal and Civil Rights]

DEMAND FOR JURY TRIAL

DOCKETED ON CM
JUL – 5 2005
BY /s/ 022

Pursuant to the Court's Order of May 31, 2005, Plaintiffs NARANJIBHAI PATEL and RAMILABEN PATEL ("Plaintiffs" or collectively "Patel") as a First Amended Complaint against Defendants, state and allege as follows:

JURISDICTION AND VENUE

1. Jurisdiction of the federal court exists pursuant to 28 U.S.C. Section 1331 and 28 U.S.C. Section 1343 (a)(3). This action, which arises under the laws and Constitution of the United States, specifically, the Fourth and Fourteenth Amendments, involves violations of federal law, actionable pursuant to 42 U.S.C. Section 1983.

2. Venue is proper in this District pursuant to 28 U.S.C. Section 1391(b) in the Defendant CITY OF LOS ANGELES ("City"), is a public entity in this District, the Individual Defendants are employees of the City and reside in this District, and the claims arose in this District.

PARTIES

3. Plaintiffs, who are husband and wife were at all times material herein the owners and operators of a motel named the Rio Palace Motor Inn (the "Motel") located at 10424 South Broadway, Los Angeles, California 90003. Plaintiffs are the on-site managers of the Motel who reside at the motel.

4. Defendant CITY OF LOS ANGELES ("Defendant" or "City") is a municipal corporation organized and existing under the Constitution and laws of the State of California.

5. Defendant CITY OF LOS ANGELES POLICE CHIEF WILLIAM BRATTON ("Chief Bratton") was at all times material herein the Police Chief of the City of Los Angeles Police Department ("LAPD"). Chief Bratton is sued in his individual and official capacity.

6. Defendants CITY OF LOS ANGELES POLICE OFFICER LOPEZ, Badge No. 31911, sued as DOE 1 ("Officer Lopez"), CITY OF LOS ANGELES POLICE OFFICER SANCHEZ, Badge No. Sanchez, sued as DOE 2 ("Officer Sanchez"); CITY OF LOS ANGELES POLICE OFFICER MARISCO, Badge No. 32006, sued as DOE 3 ("Officer Marisco"); CITY OF LOS ANGELES

POLICE OFFICER GALLEGOS, Badge No. 33847, sued as DOE 4 ("Officer Gallegos"); CITY OF LOS ANGELES POLICE OFFICER KOVAL, Badge No. 32668, sued as DOE 5 ("Officer Koval"); CITY OF LOS ANGELES POLICE OFFICER VARGAS, Badge No. 31332, sued as DOE 6 ("Officer Vargas"); and CITY OF LOS ANGELES POLICE OFFICER DAVILA, Badge No. 31802, sued as DOE 7 ("Officer Davila") were at all times material herein police officers and employees of the LAPD. At present, plaintiffs do not know the first names of the defendants.

7. The true names and capacities, whether individual, corporate, associate or otherwise, herein named as DOES 8 through 10, and persons heretofore unknown involved in the actions taken against plaintiffs are unknown to plaintiffs at this time. Plaintiffs are informed and believe and based thereon allege that each of the DOE defendants is responsible in some manner for the occurrences herein referred to, and the plaintiffs' injuries and damages as herein alleged were proximately caused by those defendants. Plaintiffs sue said defendants by such fictitious names on the grounds that the true names and capacities of said defendants are unknown to them at this time. Plaintiffs will amend this complaint as and when the true names and capacities of said DOE defendants are ascertained. Each reference in this complaint to "defendant," "defendants" or a specifically named defendant also refers to defendants sued under fictitious names.

BACKGROUND FACTS COMMON TO ALL CLAIMS

8. On March 4, 2003, Officers Marisco, Lopez and Sanchez conducted a motel registration check at the Motel pursuant to Los Angeles Municipal Code ("LAMC") 41.49. Without plaintiffs consent, authorization of said plaintiffs, or an administrative or any other type of warrant or court order, these officers, and each of them, entered onto the motel and further entered where plaintiffs reside, and in the course of the inspection, inspected and seized motel registration cards, and arrested and cited Plaintiff Ramilaben Patel without probable cause for a criminal violation of LAMC 41.49(b), failure to maintain a register, but such citation was eventually dismissed and no charges were filed.

9. On September 9, 2003, Officers Gallegos, Koval and Marisco conducted a motel registration check at the Motel pursuant to Los Angeles Municipal Code ("LAMC") 41.49. Without plaintiffs consent, authorization of said plaintiffs, or an administrative or any other type of warrant or court order, these officers, and each of them, entered onto the motel and further entered where plaintiffs reside, and in the course of the inspection, inspected and seized motel registration cards, and arrested and cited Plaintiff Naranjibhai Patel without probable cause for a criminal violation of LAMC 41.49(b), failure to maintain a register, but such citation was eventually dismissed and no charges were filed.

10. On February 18, 2004, Officers Vargas and Davila were working in an undercover capacity

and investigating motels in the area of the Motel for disorderly house violations. On said date, an undercover operation for disorderly house violations was conducted at the Motel by said officers. Without plaintiffs consent, authorization of said plaintiffs, or an administrative or any other type of warrant or court order, these officers, and each of them, entered onto the motel and further attempted to rent a room at the Motel, and without probable cause, arrested and cited Plaintiff Naranjibhai Patel for violation of Penal Code 316, and in doing so entered where plaintiffs reside. Such citation was eventually dismissed and no charges were filed.

11. In taking the said actions stated in paragraphs 8-10 above, said officers, did so in accordance with the express authority of LAMC 41.49 which authorizes warantless [*sic*] inspections of motels regarding motel registration at any time of the day and night, and with the express authority, knowledge and ratification of the other named defendants; and cited plaintiffs with criminal violations as alleged in paragraphs 8-9 above under the express authority of LAMC 11.00(m) which makes it a criminal violation for violating any provisions of the LAMC or failure to comply with any mandatory requirements of the LAMC A true and correct copy of LAMC 41.49 is attached and incorporated herein as Exhibit "A" and a true and correct copy of LAMC 11.00(m) is attached and incorporated herein as Exhibit "B"

12. Within the past nine months of the filing of this First Amended Complaint, said defendants, and each of them, have actually enforced and threatened to continue to enforce in the near

future LAMC 41.49, by conducting and authorizing warantless [*sic*] inspections of plaintiffs' Motel regarding motel registration; doing so at all times of the day and night, and with the express authority, knowledge and ratification of Chief Bratton and the City Council and other policymaking officials of the City; and in enforcing LAMC 41.49 have further threatened to use the claimed evidence gathered in any alleged civil or criminal abatement proceedings against plaintiffs. In doing so said defendants have unreasonably interefered [*sic*] with plaintiffs operation of their motel business.

13. LAMC 41.49 does not give fair notice to plaintiffs, or any person who owns and operates a motel subject to the ordinance, the practice to be avoided in that the ordinance does not specify where law enforcement may inspect the register, and whether this includes entry without consent or a warrant into the motel area where an owner or operator resides or keeps such register, or whether law enforcement may not enter without consent or a warrant into the motel area where an owner or operator resides or keeps such register.

14. LAMC 41.49 does not give fair notice to plaintiffs, or any person who owns and operates a motel subject to the ordinance, the practice to be avoided in that the ordinance does not specify for what period of time an owner or operator must retain such records, and for what period of time such register records must be open for inspection by law enforcement.

15. The City and the LAPD has not established minimal guidelines to govern the other

individual defendants, or any police officer of the LAPD, in the enforcement of LAMC 41.49 as alleged in paragraph 13 above, regarding where law enforcement may inspect the register, and whether this includes entry without consent or a warrant into the motel area where an owner or operator resides or keeps such register, or whether law enforcement may not enter without consent or a warrant into the motel area where an owner or operator resides or keeps such register; nor for what period of time an owner or operator must retain such records, and for what period of time such register records must be open for inspection by law enforcement.

16. The City and the LAPD has not established minimal guidelines to govern the other individual defendants, or any police officer of the LAPD, in the enforcement of LAMC 41.49 as alleged in paragraph 14 above, regarding w h a t period of time an owner or operator must retain such records, and for what period of time such register records must be open for inspection by law enforcement.

17. Plaintiffs, as LAMC 41.49 has been applied to them in the past by the defendants as alleged in paragraphs 8-10 above, and as LAMC 41.49 will be applied to them in the future by the defendants, have not and cannot with reasonable certainty determine the practice to be avoided under LAMC 41.49, in that the ordinance does not specify where law enforcement may inspect their register, and whether this includes entry without consent or a warrant into the motel area where they reside or keep such register, or whether law enforcement may not enter without consent or a warrant into the

motel area where they reside or keep such register; and have not and cannot with reasonable certainty determine the practice to be avoided under LAMC 41.49 as there are no minimal guidelines established to govern law enforcement in this regard.

18. Plaintiffs, as LAMC 41.49 has been applied to them by the defendants as alleged in paragraphs 8-10 above, and as LAMC 41.49 will be applied to them in the future by the defendants, cannot with reasonable certainty determine the practice to be avoided under LAMC 41.49, in that the ordinance does not specify for what period of time they must retain such records, and for what period of time such register records must be open for inspection by law enforcement; and there are no minimal guidelines established to govern law enforcement in this regard.

19. LAMC 41.49(b) authorizes a warrantless inspection by the LAPD and the individual defendant police officers of the register of a motel owner or operator, and the register of the plaintiffs at all times of the day and night, despite the fact that (1) plaintiffs' motel and the motel industry in general is not a "closely regulated" industry; (2) there is no substantial government interest or special need beyond the normal need for law enforcement that is the basis for LAMC 41.49 under which an inspection is made; (3) the warrantless inspection scheme under LAMC 41.49 is not necessary to further the objectives of the regulatory scheme; and (4) LAMC 41.49 does not limit the discretion of the City, LAPD, the individual defendant police officers, nor any LAPD police officer as to the time, place and scope of the inspection.

20. Plaintiffs, as LAMC 41.49 has been applied to them by the defendants as alleged in paragraphs 8-10 above, and as LAMC 41.49 will be applied to them in the future by the defendants, authorizes a warrantless inspection by the LAPD and the individual defendant police officers of the register of a motel owner or operator, and the register of the plaintiffs at all times of the day and night, despite the fact that (1) plaintiffs' motel and the motel industry in general is not a "closely regulated" industry; (2) there is no substantial government interest or special need beyond the normal need for law enforcement that is the basis for LAMC 41.49 under which an inspection is made; (3) the warrantless inspection scheme under LAMC 41.49 is not necessary to further the objectives of the regulatory scheme; and (4) LAMC 41.49 does not limit the discretion of the City, LAPD, the individual defendant police officers, nor any LAPD police officer as to the time, place and scope of the inspection.

21. Hotels operating in the City, such as for example the Westin-Bonaventure hotel located on Figueroa Street in downtown Los Angeles, or the Radisson Hotel located in Mid-Wilshire Los Angles, are not legislatively classified as motels under LAMC 41.49 or the LAMC in general, and thus, the City and the LAPD have not in the past and do not enforce any of the provisions of LAMC 41.49 to legislatively classified hotels in the City.

22. There is no rational basis for the legislative distinction between hotels and motels under LAMC 41.49 in that both classes rent rooms on a temporary basis subject to the same restriction in the LAMC as to the time limits as to the rental of

a room at a temporary lodging facility and said time restrictions serve law enforcement purposes in curbing prostitution and the sale and use of drugs.

23. Over the past two years, including the time period alleged above, the City and the LAPD have adopted a policy, custom and practice, which the individual defendants have implemented, regarding the inspection of motel registers under LAMC 41.49, by conducting multiple inspections at all times of the day and night of plaintiffs' motel register, rather than other motels in other parts of the City other than the area where plaintiffs' motel resides, despite the fact that all such other motels in the City are subject to the inspection provisions of LAMC 41.49; and furthermore, despite the fact that the City and the LAPD are aware that such other motels in other parts of the City are violating the provisions of the ordinance, and also despite the fact that the City and the LAPD are aware that other motels in other parts of the City are operating for the purposes of fostering prostitution or the sale and use of drugs.

24. The City, LAPD, and the other individual defendants have taken the actions against plaintiffs as alleged in paragraph 23 above, not for the purpose of enforcing LAMC 41.49 for law enforcement purposes, but as a pretext to drive plaintiffs' out of business.

Based on the above facts, plaintiffs allege the following claims:

FIRST CLAIM FOR RELIEF

(Violation of Civil Rights Under 42 U.S.C. Section 1983 by All Plaintiffs Against All Defendants)

25. Plaintiffs reallege and incorporate herein by reference to each and every allegation contained in Paragraphs 1 through 24, and all its subparts, inclusive, as set forth hereinabove.

26. Plaintiffs are informed and believe, and based upon such information and belief allege, that in doing all of the things herein mentioned, defendants, and each of them, acted under color of the statutes, regulations, customs and usages of the City of Los Angeles and the State of California for purposes of "state action" under 42 U.S.C. Section 1983.

27. Plaintiffs are further informed and believe, and based upon such information and belief allege, that by taking the actions hereinabove alleged in paragraphs 8-24 above, defendants, and each of them, violated and continue to threaten to violate the constitutional and civil rights of plaintiffs, in particular to their rights under the Fourth Amendment as incorporated by the Fourteenth Amendment of the United States Constitution to be free from unreasonable searches and seizures of their person or property; and furthermore, the LAMC 41.49 both on its face in all its applications, and as applied to plaintiffs, is in violation of the Fourth Amendment for the reasons stated in paragraphs 19-20 above.

28. Plaintiffs are further informed and believe, and based upon such information and belief allege, that by taking the actions hereinabove alleged in paragraphs 8-24 above, defendants, and each of them, violated and continue to threaten to violate the constitutional and civil rights of plaintiffs, in particular to their rights to the equal protection of the laws under the Equal Protection Clause of the Fourteenth Amendment of the United States Constitution to be free from arbitrary discrimination in the enforcement of LAMC 41.49 whereby said enforcement has been done on a pretextual basis by defendants, and each of them, in order to drive plaintiffs out of business, and that has not been so enforced against similarly situated persons as alleged in paragraphs 23-24 above; and furthermore, that LAMC 41.49 both on its face in all its applications, and as applied to plaintiffs, is in violation of the Equal Protection Clause for the reasons stated in paragraphs 21-22 above.

29. Plaintiffs are further informed and believe, and based upon such information and belief allege, that by taking the actions hereinabove alleged in paragraphs 8-24 above, defendants, and each of them, violated and continue to threaten to violate the constitutional and civil rights of plaintiffs, in particular to their rights under the Due Process Clause of the Fourteenth Amendment of the United States Constitution in the application of LAMC 41.49 as applied to themm [*sic*], by being unconstitutionally vague for the reasons stated in paragraphs 17-18 above; and furthermore, that LAMC 41.49 on its face in all its applications violates the Due Process Clause of the Fourteenth

Amendment of the United States Constitution by being unconstitutionally vague in that it is impossible to enforce LMAC 41.49 with reasonable certainty in advance in all its potential applications for the reasons stated in paragraphs 13-16 above.

30. In the alternative, if LAMC 41.49 is found not be unconstitutionally vague in all its applications as alleged in paragraph 29 above, LAMC 41.49 on its face violates the Due Process Clause of the Fourteenth Amendment of the United States Constitution by being unconstitutionally vague in improperly prohibiting a substantial amount of constitutionally protected conduct for the reasons stated in paragraphs 13-16 above.

31. Defendant City in engaging in the above-described conduct, is liable as it acted according to official policy, custom and practice of the City. The individual defendants are not entitled to qualified immunity as they violated plaintiffs' constitutional and civil rights, and in doing so violated clearly established law in a manner that was unreasonable under the circumstances.

32. As a proximate result of the foregoing acts of defendants, and each of them, plaintiffs have suffered and continue to suffer extreme economic and non-economic damages, including but not limited to severe emotional distress and unreasonable intereference [*sic*] with their motel business according to proof at trial. Plaintiffs are informed and believe, and based upon such information and belief alleges, that the damages they have suffered and continue to incur is at least $1,000,000 per each individually named plaintiff;

and that plaintiffs are entitled to punitive and exemplary damages for the conduct of the individually named defendants; and are also entitled to a declaration that LAMC 41.49 is unconstitutional on its face and as applied in violation of plaintiffs' constitutional rights as set forth in paragraphs 27-30 above. The plaintiffs are entitled to their reasonable attorneys fees under 42 U.S.C. section 1988.

WHEREFORE, Plaintiffs pray judgment against Defendants, and each of them, as follows:

FIRST CLAIM FOR RELIEF

1. For damages according to proof at trial but not less than $1,000,000.00 per each individually named Plaintiff;
2. For declaratory and injunctive relief;
3. For punitive damages against the individual defendants;
4. For attorney's fees pursuant to 42 U.S.C. Section 1988;
5. For costs of suit; and
6. For such other and further relief as the Court deems just and proper.

DATED: July 1, 2005

LAW OFFICES OF FRANK A. WEISER

By: /s/ Frank A. Weiser

FRANK A. WEISER, Attorney for Plaintiffs NARANJIBHAI PATEL and RAMILABEN PATEL

DEMAND FOR JURY TRIAL

Plaintiffs hereby demand a jury trial pursuant to F.R.C.P. 38.

DATED: July 1, 2005

LAW OFFICES OF FRANK A. WEISER

By: /s/ Frank A. Weiser

FRANK A. WEISER, Attorney for Plaintiffs NARANJIBHAI PATEL and RAMILABEN PATEL

[Exhibits to First Amended Complaint in Relevant Part]

SEC. 41.49. MOTEL REGISTERS.
(Added by Ord. No. 127.508, Eff. 6/29/64.)

Every person who owns or operates a motel shall keep a register in which shall be entered:

(a) The name and address of each guest, and the name and address of each member of his party.

(b) In the event that such guest or his party travels by means of motor vehicle, the register shall specify the make, type and license number of the motor vehicle and the year of registration. Said register shall at all times be open for inspection to all police officers.

SEC. 11.00 PROVISIONS APPLICABLE TO CODE.
(Amended by Ord. No. 175,676, Eff. 1/11/04.)

(a) **Short Title. Reference to Code in Prosecutions. Designation in Ordinances.** This Code, which consists of criminal or regulatory ordinances of this City, shall be known as the "Official Los Angeles Municipal Code," and it shall be sufficient to refer to the Code as the "Los Angeles Municipal Code" in any prosecution for the violation of any of its provisions; it shall also be sufficient to designate any ordinance adding to, amending or repealing this Code or a portion of this Code as an addition or amendment to or a repeal of the "Los Angeles Municipal Code."

(b) **Existing Law Continued.** The provisions of this Code, to the extent they are substantially the same as existing provisions relating to the same subject matter, shall be construed as restatements and continuations of the Code and not as new enactments.

(c) **Construction.** The provisions of this Code and all proceedings under it are to be construed with a view to effect its objectives and to promote justice.

(d) **Effect of Code on Past Actions and Obligations Previously Accrued.** Neither the adoption of this Code nor the repeal of any ordinance of this City shall in any manner affect the prosecution for violation of ordinances, which violations were committed prior to the effective date of the ordinance, nor be construed as a waiver of any license or penalty at the effective date due and unpaid under the ordinance, nor be construed as affecting any of the provisions of the ordinance relating to the collection of any license or penalty or the penal provisions applicable to any violation, nor to affect the validity of any bond or cash deposit in lieu of a bond, required to be posted, filed or deposited pursuant to any ordinance or its violation, and all rights and obligations associated with the ordinance shall continue in full force and effect.

(e) **References to Specific Ordinances.** The provisions of this Code shall not in any manner affect deposits or other matters of record which refer to, or are otherwise connected with ordinances that are specially designated by a number or otherwise and which are included within this Code, but those

references shall be construed to apply to the corresponding provisions contained within this Code.

(f) **Heading, Effect of.** Division, chapter, article and section headings contained in this Code shall not be deemed to govern, limit, modify or in any manner affect the scope, meaning or intent of the provisions of any division, chapter, article or section.

(g) **Reference to Acts or Omissions Within This City.** This Code shall refer only to the omission or commission of acts within the territorial limits of the City of Los Angeles and that territory outside of this City over which the City has jurisdiction or control by virtue of the Constitution, Charter or any law, or by reason of ownership or control of property.

(h) **Proof of Notice.** Proof of giving any notice may be made by the certificate of any officer or employee of this City or by affidavit of any person over the age of 18 years, which shows service in conformity with this Code or other provisions of law applicable to the subject matter concerned.

(i) **Notices, Service of.** Whenever a notice is required to be given under this Code, unless different provisions in this Code are otherwise specifically made applicable, the notice may be given either by personal delivery to the person to be notified or by deposit in the United States Mail in a sealed envelope, postage prepaid, addressed to the person to be notified at his or her last known business or residence address as it appears in the public records or other records pertaining to the matter to which the notice is directed. Service by

mail shall be deemed to have been completed at the time of deposit in the mail.

(j) **Prohibited Acts; Include Causing, Permitting, Suffering.** Whenever in this Code any act or omission is made unlawful it shall include causing, permitting, aiding, abetting, suffering or concealing the fact of the act or omission.

(k) **Validity of Code.** If any section, subsection, sentence, clause, phrase or portion of this Code is for any reason held to be invalid or unconstitutional by the decision of any court of competent jurisdiction, that decision shall not affect the validity of the remaining portions of this Code. The Council of this City hereby declares that it would have adopted this Code and each section, subsection, sentence, clause, phrase or portion of the Code, irrespective of the fact that any one portion or more sections, subsections clauses, phrases or portions are declared invalid or unconstitutional.

(l) In addition to any other remedy or penalty provided by this Code, any violation of any provision of this Code is declared to be a public nuisance and may be abated by the City or by the City Attorney on behalf of the people of the State of California as a nuisance by means of a restraining order, injunction or any other order or judgment in law or equity issued by a court of competent jurisdiction. The City or the City Attorney, on behalf of the people of the State of California, may seek injunctive relief to enjoin violations of, or to compel compliance with, the provisions of this Code or seek any other relief or remedy available at law or equity. **(Amended by Ord. No. 177,103, Eff. 12/18/05.)**

Violations of this Code are deemed continuing violations and each day that a violation continues is deemed to be a new and separate offense and subject to a maximum civil penalty of $2,500 for each and every offense.

As part of any civil action, the court may require posting of a performance bond to ensure compliance with this Code, applicable state codes, court order or judgment.

(m) It shall be unlawful for any person to violate any provision or fail to comply with any of the requirements of this Code. Any person violating any of the provisions or failing to comply with any of the mandatory requirements of this Code, shall be guilty of a misdemeanor unless that violation or failure is declared in this Code to be an infraction. An infraction shall be tried and be punishable as provided in Section 19.6 of the Penal Code and the provisions of this section. Any violation of this Code that is designated as a misdemeanor, may be charged by the City Attorney as either a misdemeanor or an infraction.

Every violation of this Code is punishable as a misdemeanor unless provision is otherwise made, and shall be punishable by a fine of not more than $1,000.00 or by imprisonment in the County Jail for a period of not more than six months, or by both a fine and imprisonment.

Every violation of this Code that is established as an infraction, or is charged as an infraction, is punishable by a fine as set forth in this Code section, or as otherwise provided in this Code, not to exceed $250.00 for each violation.

As an alternative enforcement method that may be used in the sole discretion of the City, violations of this Code may be addressed through the use of an Administrative Citation as set forth in Article 1.2 of Chapter 1 of this Code. The administrative fines prescribed by Chapter 1, Article 1.2 may be sought in addition to any other remedy, including, but not limited to, criminal remedies, injunctive relief, specific performance, and any other remedy provided by law. The remedies provided by Chapter 1, Article 1.2 of this Code are cumulative to those prescribed by this Code or other applicable law and are not exclusive. **(Added by Ord. No. 182,610, Eff. 8/2/13.)**

Each person shall be guilty of a separate offense for each and every day during any portion of which any violation of any provision of this Code is committed, continued or permitted by that person, and shall be punishable accordingly.

(n) Pursuant to Government Code Section 38773, the City may summarily abate any nuisance at the expense of the persons creating, causing, committing, or maintaining it and the expense of the abatement of the nuisance may be a lien against the property on which it is maintained and a personal obligation against the property owner.

(o) Pursuant to Government Code Section 38773.7, upon entry of a second or subsequent civil or criminal judgment within a two-year period that finds an owner of property responsible for a condition that may be abated in accordance with California Government Code Section 38773.5, a court may order the owner to pay treble the costs of

the abatement. These costs shall not include conditions abated pursuant to California Health and Safety Code Section 17980.

PROOF OF SERVICE

STATE OF CALIFORNIA)
) ss.
COUNTY OF LOS ANGELES)

I am employed in the County of Los Angeles, am over the age of 18 years, and not a party to the within action. My business address is 3460 Wilshire Boulevard, Suite 903, Los Angeles, California 90010.

On July 1, 2005, I served the document entitled FIRST AMENDED COMPLAINT FOR DAMAGES AND DECLARATORY AND INJUNCTIVE RELIEF [Violation of Federal Civil Rights] on the interested parties in this action by mailing a true copy thereof addressed as follows:

Rockard J. Delgadillo, City Attorney
Gary G. Geuss, Senior Assistant City Attorney
Cory M. Brente, Assistant City Attorney
Robert M. Brown, Deputy City Attorney
Police Litigation Section
200 N. Main Street, 7th Floor
City Hall East
Los Angeles, CA 90012-4129

X BY FIRST CLASS U.S. MAIL: I deposited such envelope with postage thereon fully prepaid in the United States mail at Los Angeles, California.

BY PERSONAL SERVICE: I caused to be delivered such document by hand to the persons listed as addressed above.

BY FACSIMILE TRANSMISSION: I transmitted to the persons listed at the telephone number above.

X (FEDERAL) I declare that I am employed by a member of the bar of this Court, at whose direction this service was made.

Executed on July 1, 2005 at Los Angeles, California.

/s/ Frank A. Weiser

Frank A. Weiser

ROCKARD J. DELGADILLO, City Attorney (SBN 125465)
MICHAEL L. CLAESSENS, Senior Assistant City Attorney (SBN 125379)
DON W. VINCENT, Assistant City Attorney (SBN 63084
ROBERT BROWN, Deputy City Attorney (SBN 187845)
200 North Main Street, City Hall East, 7th Floor
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E-mail: rbrown@atty.lacity.org

Attorneys for Defendant City of Los Angeles

UNITED STATES DISTRICT COURT
CENTRAL DISTRICT OF CALIFORNIA

CV03-3610-DSF
CV04-2192-DSF
Case No. CV05-01571 DSF (JWJx)

Assigned to Honorable Dale S. Fischer

FILED
CLERK, U.S. DISTRICT COURT
FEB 17 2006
CENTRAL DISTRICT OF CALIFORNIA
BY /s/ DEPUTY

NARANJIBHAI PATEL,
RAMILABEN PATEL,

Plaintiffs,

vs.

CITY OF LOS ANGELES, a municipal corporation; CITY OF OS [*sic*] ANGELES POLICE CHIEF WILLIAM BRATTON; CITY OF LOS ANGELES POLICE OFFICER LOPEZ, Badge No. 31911, No. 33002, sued as Doe 1; CITY OF LOS ANGELES POLICE OFFICER SANCHEZ, Badge No. 32705, sued as DOE 2; CITY OF LOS ANGELES POLICE OFFICER MARISCO, Badge No. 32006, sued as DOE 3; CITY OF LOS ANGELES POLICE OFFICER GALLEGOS, Badge No. 33847, sued as DOE 4; CITY OF LOS ANGELES POLICE OFFICER KOVAL, Badge No. 32668, sued as DOE 5; CITY OF LOS ANGELES POLICE OFFICER VARGAS, Badge No. 31332, sued as DOE 6; CITY OF LOS ANGELES POLICE OFFICER DAVILA, Badge No. 31802, sued as DOE 7; and DOES 8 THROUGH 10, Inclusive,

Defendants.

STIPULATION TO CONSOLIDATE AND DISMISS

DOCKETED ON CM
FEB 21 2006
BY /s/ 005

IT IS HEREBY STIPULATED BY AND BETWEEN THE PARTIES to these actions through their designated counsel, that because these cases involve identical legal issues regarding the constitutionality of LAMC 41.49, *Rameshbhai Bhakta, et al. vs. City of Los Angeles*, Case Number CV04-2192 DSF, *Rajendrakumar Bhakta, etl. [sic] al. v. City of Los Angeles, et. al.* Case Number CV03-3610 DSF should be consolidated for all purposes, including trial, with *Naranjibhai Patel, et. al. v. City of Los Angeles, et. al.*, Case Number CV05-1571 DSF, such that Case Number CV05-1571 will be the lead case.

The parties further stipulate through their undersigned designated counsel, that Defendants William Bratton, LAPD Officers Lopez (31911), Lauraine Harrington (33002), Sanchez (32705), Marisco (32006), Gallegos (33847), Koval (32668), Vargas (31332), Davila (31802), Michael Barrios, Michael Shea, Yvonne Enriquez, Stinson Brown, David Drew, Edward Pigao, Stephanie Tuller, and, all individual defendants, are dismissed without prejudice from each action, and shall not be brought into the consolidated action.

The parties agree that the sole issue in the consolidated action is the constitutionality of Los Angeles Municipal Code Section 41.49; that there are no damages claims; and that *Monell* claims are not at issue.

This stipulation is only applicable to the claims raised in the consolidated action and is not specifically applicable to any other lawsuit for damages that may be filed in the future or that may be filed by any individual plaintiff against the City of

Los Angeles or any of the individual defendants. Plaintiffs will not file such a damages action in the consolidated lawsuit of *Naranjibhai Patel, et. al. v. City of Los Angeles, et. al.*, Case Number CV05-1571 DSF. The dismissals in this case do not affect the statute of limitations on any prospective lawsuit. Specifically, Plaintiffs preserve their statute to limitations for damages for any claims already raised in these lawsuits.

The parties further stipulate that they may take more than ten (10) depositions.

The parties further stipulate that any 14th Amendment Equal Protection Clause claims, alleging racial discrimination, are dismissed from this action.

The parties further stipulate that each party will bear his or her own costs and attorney fees for litigation regarding said Defendants. This Stipulation is made pursuant to Rule 41(a) of the Federal Rules of Civil Procedure and Local Rule 7-1.

Dated: February 15, 2006

ROCKARD J. DELGADILLO, City Attorney
MIKE CLAESSENS, Sr. Assistant City Attorney
DON W. VINCENT, Assistant City Attorney
By: /s/ Robert Brown
ROBERT BROWN,
Deputy City Attorney
Attorney for Defendant City of Los Angeles

Dated: February 15, 2006

LAW OFFICES OF FRANK WEISER
By: /s/ Frank A. Weiser
FRANK A. WEISER
Attorney for Naranjibhai Patel and Ramilaben Patel

IT IS SO ORDERED:

Dated: 2/16, 2006

/s/ Dale S. Fischer
UNITED STATES DISTRICT ~~COURT~~ JUDGE DALE FISCHER

Proof of Service
(Via Various Methods)

I, GLORIA E. YOSHINAGA, declare as follows:

I am over the age of 18 years, and not a party to this action. My business address is 200 North Main Street, City Hall East, 7th Floor, Los Angeles, California 90012, which is located in the county where the mailing described below took place.

On February 16, 2006, I served the forgoing document(s) described as:

STIPULATION TO CONSOLIDATE AND DISMISS

on all interested parties in this action, by placing a true copy thereof in a sealed envelope addressed as follows:

Frank A Weiser, Esq.
3450 Wilshire Blvd, Suite 903
Los Angeles, CA 90010

Attorney for Plaintiff
Naranjibhai Patel and Ramilaben Patel

[ ] BY PERSONAL SERVICE ( ) I delivered by hand, or ( ) I caused to be delivered by via messenger service, such envelope to the offices of the addressee with delivery time prior to 5:00 p.m. on the date specified above.

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I caused such documents to be transmitted to the offices of the addressee via facsimile machine, on the date specified above. The facsimile machine I used was in compliance with Rule 2003(3) and the transmission was reported as complete without error. Pursuant to rule 2008(e), I caused a copy of the transmission report to be properly issued by the transmitting facsimile machine.

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I declare that I am employed in the office of a member of the bar of this court at whose direction this service was made.

Executed on February 16, 2006, at Los Angeles, California.

/s/Gloria E. Yoshinaga
Gloria E. Yoshinaga

DECLARATION OF ERIC MOORE

I, ERIC MOORE, declare as follows:

1. I am currently employed as a Detective with the Los Angeles Police Department (hereinafter "LAPD"). I have been a peace officer with LAPD for seventeen (17) years. I have been assigned to the Community Problems Unit (hereinafter "CPU") for approximately eight (8) years. CPU's primary function is nuisance abatement. The goal of CPU is to mitigate ongoing nuisance and crime issues at locations where traditional means of enforcement do not resolve the issues or have only a temporary effect in resolving issues. I have personally investigated and resolved over four hundred (400) nuisance cases. I am a Department expert on nuisance abatement and provide training at LAPD's "P.O.S.T." accredited Vice School. I am also tasked with providing training throughout the Department on nuisance abatement as well as the City Help Achieving Magnificence Program (CHAMP). I have received formal and on the job training in Crime Prevention Through Environmental Design (CPTED) strategies.

2. As part of my duties in overseeing the enforcement of Los Angeles Municipal Code section 41.49 (hereinafter "LAMC 41.49"), I am familiar with the policy and practice of enforcing LAMC 41.49. The motel owners and/or operators are well aware of what is required of them under LAMC 41.49. When Los Angeles Police Department officers request to inspect the motel registration cards from the motel owners and/or operators, the registration cards are provided. There is no misunderstanding of what records are being requested by the officers.

However, problems arise when motel owners and/or operators fail to record all the information required under LAMC 41.49. If the motel registration cards are not complete, the motel owners and/or operators are then cited for violating LAMC 41.49.

3. At times, LAPD officers would observe guests check in to motels. However, upon inspection of the motel registration cards, the requisite information is either incomplete or a motel registration card was never completed for the observed guests.

4. Based on my experience in law enforcement and/or understanding of LAMC 41.49, the motel registration card requirement deters prostitution and/or other criminal activities at motels. Prostitutes and/or criminals are reluctant to provide true identifying information and/or falsify such information. Often times, this is the reason why motel registration cards are incomplete. By requiring that motel owners and/or operators comply with LAMC 41.49 prior to renting its motel rooms, it furthers the City's goal in eradicating prostitution and/or other criminal activities at motels.

5. All the facts set forth within this declaration are within my personal knowledge, and if sworn as a witness, I could and would testify competently thereto.

I declare under penalty of perjury that the foregoing is true and correct.

Executed on this 12th day of October, 2006, at Los Angeles, California.

/s/ Eric Moore

ERIC MOORE
Declarant

PROOF OF SERVICE BY MAIL
NARANJIBHAI PATEL, RAMILABEN PATEL v. THE CITY OF LOS ANGELES, et al.
CASE NO. CV05-1571 DSF (AJWx)
[Consolidated w/ Case Nos. CV04-2192 DSF (AJWx) and CV03-3610 DSF (AJWx)]

I, **ANNA MARIE SCHWABER**, declare as follows:

At the time of service I was over 18 years of age and not a party to this action. My business address is 200 N. Main Street, City Hall East, 9th Floor, Room 916, Los Angeles, California 90012, which is in the County, City and State where this mailing occurred.

On **MAY 21, 2009**, I served the document described as: **APPELLEE'S SUPPLEMENTAL EXCERPTS OF RECORD** on all interested parties in this action:

FRANK A. WEISER, Esq.
3460 Wilshire Boulevard, Suite 1212
Los Angeles, California 90010
Tel. No.: (213) 384-6964 / Fax No.: (213) 383-7368

I served a true copy of the document(s) above by:

[ ] Personally delivering it to the person(s) indicated below in the manner provided in FRCivP 5(b).

[X] Depositing it in the United States Mail in a sealed envelope with the postage thereon fully prepaid to the address(es) above.

Executed on **MAY 21, 2009**, at Los Angeles, California.

[ ] I hereby certify that I am a member of the Bar of the United States District Court, Central District of California.

[X] I hereby certify that I am employed in the office of a member of the Bar of this Court at whose direction the service was made.

[X] I hereby certify under the penalty of perjury that the foregoing is true and correct.

/s/ Anna Marie Schwaber
ANNA MARIE SCHWABER

UNITED STATES DISTRICT COURT
CENTRAL DISTRICT OF CALIFORNIA

CIVIL MINUTES – TRIAL

Case No. CV 05-1571-DSF(AJWx)
Date 12/7/06
Title: PATEL -v-CITY OF LOS ANGELES, et al.

Present: The Honorable DALE S. FISCHER

PAUL D. PIERSON
Deputy Clerk

BRIDGET MONTERO
Court Reporter / Recorder, Tape No.

Attorneys Present for Plaintiff(s):
FRANK WEISER

Attorneys Present for Defendants:
TODD LEUNG

1st ____ Day Court Trial
____ Day Jury Trial

X One day trial:
- __ Begun (1st day);
- __ Held & Continued;
- X Completed by jury verdict/submitted to court.

__ The Jury is impaneled and sworn.

__ Opening Statements made by _____

X Witnesses called, sworn and testified.
__ Exhibits
X Exhibits admitted.

__ Plaintiff(s) rest.
__ Defendant(s) rest.

__ Closing arguments made by
    __ plaintiff(s)
    __ defendant(s).
__ Court instructs jury.

__ Bailiff(s) sworn.
__ Jury retires to deliberate.
__ Jury resumes deliberations.

__ Jury Verdict in favor of
    __ plaintiff(s)
    __ defendant(s)
    is read and filed.

__ Jury polled.
__ Polling waived.

__ Filed Witness & Exhibit Lists
__ Filed jury notes.
__ Filed jury instructions.

__ Judgment by Court for _____
    __ plaintiff(s)
    __ defendant(s).

___ Findings, Conclusions of Law & Judgment to be prepared by
- ___ plaintiff(s)
- ___ defendant(s).

X Case submitted.

X Briefs to be filed by 1/8/07 for pltf & 1/22/07 for dft

___ Motion to dismiss by _____ is
- ___ granted.
- ___ denied.
- ___ submitted.

___ Motion for mistrial by _____ is
- ___ granted.
- ___ denied.
- ___ submitted.

___ Motion for Judgment/Directed Verdict by is
- ___ granted.
- ___ denied.
- ___ submitted.

___ Settlement reached and placed on the record.

___ Clerk reviewed admitted exhibits with counsel to be submitted to the Jury/Court for deliberation/findings.

___ Counsel stipulate to the return of exhibits upon the conclusion of trial. Exhibit Release Form prepared and filed.

__ Trial subpoenaed documents returned to subpoenaing party.

__ Case continued to _____ for further trial/further jury deliberation.

__ Other:

_____: 50_

Initials of Deputy Clerk ____/s/____

DOCKETED ON CM
DEC 12 2006
BY_____022

UNITED STATES DISTRICT COURT
CENTRAL DISTRICT OF CALIFORNIA
WESTERN DIVISION

NARANJIBHAI PATEL, et al.,

Plaintiffs,

vs.

CITY OF LOS ANGELES,

Defendant.

No. CV05-01571-DSF

TRANSCRIPT OF PROCEEDINGS

THE HONORABLE DALE S. FISCHER, U.S. DISTRICT JUDGE PRESIDING

LOS ANGELES, CALIFORNIA

DECEMBER 7, 2006

COURT TRIAL

BRIDGET R. MONTERO CSR, CRR, RMR
bridgetmontero@yahoo.com

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	D	X	ReD	ReX
For the Plaintiff:				
BRAFUL BHAKTA	23	25	26	

EXHIBIT INDEX

Exhibit No.	Received
(None)	

THURSDAY, DECEMBER 7, 2006; 9:30 A.M.

THE CLERK: We're on the record in CV05-1571-DSF, Patel vs. the City of Los Angeles and associated cases -- consolidated cases, excuse me, CV03-3610 and 04-2192.

Counsel, please make your appearances.

MR. WEISER: Good morning, Your Honor. Frank Weiser on behalf of Plaintiffs.

THE COURT: Good morning.

MR. LEUNG: Good morning, Your Honor. Todd Leung on behalf of The City of LA.

THE COURT: Good morning.

Tell me what we're doing today. Are we here on the new version of this provision?

MR. WEISER: That's the obvious question, Your Honor. I think we're here on both. And even though I know the ordinance has been amended and there is an issue of mootness that has to be addressed -- that's a jurisdictional issue has to be addressed by the Court and, obviously, by counsel -- I think the old ordinance still presents -- and I brought a case for Your Honor to look at, the *In Re Parell* (ph) case, which was not cited in my original memorandum of contentions of fact and law, simply because at that time, there was no new ordinance in effect.

But that talks about some of the exceptions to the mootness doctrine.

And so I think that I would be arguing that even the old ordinance, as to the provision of the inspections, the demand by the police on the inspections, still is a live case in controversy. It's spilled over into the new ordinance.

But the Court can still rule as far as declaratory relief, certainly not injunctive relief, declaratory relief, but on the old ordinance. I think we are here in some sense on the new ordinance, although the problem I have is -- I'm sure the Court is thinking about this -- is that we don't have a complaint on file for the Court.

THE COURT: My other question was going to be whether there was standing to challenge the new -- what is the statute? What do we call it, a regulation?

MR. LEUNG: It's an ordinance, Your Honor.

MR. WEISER: Ordinance, Your Honor. It's so new, and there's not been any application of it at this point, although I think -- and that I think can be addressed, too -- I think that the -- there's Ninth Circuit case law, and I think even an en banc case, that I don't have in front of me, that talks about the fact that one can have an ordinance that has not been applied but still -- because of the threat of an application of criminal prosecution, it would still qualify for purposes of standing.

There is a case out of the Ninth Circuit. I don't have that. I saw it in the *Daily Report* some two months ago. I have been trying to find it. And I would ask the Court just on the mootness question, and perhaps the standing question, even though

we're here to argue in general, if the Court would allow very, very limited briefing on the mootness-in-standing issue, but I think that case is very relevant.

There was a case that I saw that came out of the Ninth Circuit where, in fact, a new ordinance was passed, and the old ordinance -- and the issue of mootness came up. The Ninth Circuit found the controversy was not moot and actually ruled on the ordinance.

I think that would be highly relevant to this proceeding. I don't have the case, unfortunately.

THE COURT: Sounds a little unusual. I have enough to do without ruling on things that don't exist anymore. But if the Ninth Circuit says I should, I will, but --

MR. WEISER: I think -- I think it's an exception to the general doctrine, but as I said, I think the *Parell* case that I have brought here this morning talks about if there is some effective relief the Court can give, and if there is still a continuing case in controversy between the parties, then there is an exception to the mootness doctrine.

In this case, I think at least under the new ordinance, we still have a controversy over the issue of the police coming and inspecting motel registration cards upon demand, even if no consent is given, without a warrant.

So it seems to me that we do still have a continuing case in controversy. I noticed in Mr. Leung's amended trial brief, he does raise mootness as to some issues. He doesn't raise it as to all the issues.

So that's where I think we -- our position would be. We have both the old ordinance that's, in some sense, a very limited sense, still in play as to the provision of the demand, and that's spilled over in the new ordinance, and the new ordinance is also -- Mr. Leung has attached it also to his declaration of --

THE COURT: All right. Thank you.

Mr. Leung, is there anything you want to address before Mr. Weiser begins with the merits?

MR. LEUNG: Yes, Your Honor. In response to Mr. Weiser's comments, Los Angeles Municipal Code 4149 has been amended, and the old ordinance, since there's no damages being sought by the plaintiffs, basically would be an academic exercise.

We have a new ordinance that took effect on December 2nd, and, at most, this is a facial challenge of that ordinance.

And I'd like to add, the issue of standing, if we could be -- I'm not prepared to address that issue with the Court, and if I could be allowed to supplement the briefing on that matter.

THE COURT: Better you than me. And, obviously, that's the first question. If there's no standing, I'm not going to rule on this matter at all. So --

MR. LEUNG: Thank you, Your Honor.

THE COURT: All right. Mr. Weiser.

MR. WEISER: Does the Court want me to go through the general argument?

THE COURT: I take it you don't have any witnesses or other evidence to present.

MR. WEISER: I do have one witness, Your Honor, but I'm going to reserve that. I would like to get into my argument first, and then the Court can determine whether the witness should get up there and testify.

I'm going to talk about 4149, both in the context of the old ordinance and the new ordinance. And, of course, the basic controversy here is this provision, which we believe is in both ordinances, that allows the law enforcement -- specifically, law enforcement, both ordinances talk about not government in general but law enforcement having the right to inspect these motel registration cards, and the old ordinance even uses the language "at any time upon demand."

The new ordinance doesn't use that language, but still talks about it shall be made available to law enforcement, but as much as possible, they shouldn't interfere with the peace and quiet of the motel operator.

We have briefed, and I think extensively throughout the course of these cases, the *Burger* case. And I'd like to point out -- and I think was not addressed yet by Mr. Leung, but I think it's a very, very important point, is that the *Burger* case arose out of the special needs doctrine.

In fact, I think Mr. Leung in his amended trial brief even quotes directly from *Burger*, where *Burger* talks about, at 482 U.S. 702, quote, In situations of special need where the privacy interests of the owner

are weakened and the government interests in regulating particular businesses are concomitantly heightened, a warrantless inspection of commercial premises may well be reasonable within the meaning of the Fourth Amendment.

My argument has been continuing, even though I've addressed *Burger*, I think, is that you don't get to *Burger* in an administrative stream like this unless you have -- you've satisfied the special needs doctrine.

And the Supreme Court subsequent to *Burger* -- and I've cited two cases -- that's the *Indianapolis vs. Edmond* case -- it's in my memorandum of contentions of fact and law at page 16 -- and the *Ferguson vs. The City of Charleston* case, both Supreme Court cases -- have specifically stated that the special needs doctrine has to be divorced from the immediate objective of law enforcement.

In the *Ferguson* case, drug tests of pregnant women at hospitals was being made available to law enforcement, and they were being made without a warrant, without consent. And the U.S. Supreme Court invalidated that program, saying that the immediate objective was to provide evidence for law enforcement, and, therefore, that was unconstitutional under the Fourth Amendment.

What we have here is, is -- I think it's very clear from the face of the ordinance, this is designed for law enforcement. Now, whatever one's view of the goal here as -- as good as the goal is to deter the type of crime that law enforcement is trying to deter, but it is -- the immediate objective is to provide

evidence for law enforcement in deterring that. And two things I would point out.

In the new ordinance, at 4149, there's even a preamble where the City of LA has now indicated that one of the major purposes of this ordinance is to deter and to allow law enforcement to have the tools to deter prostitution and drug -- drug -- for drug abatement purposes.

Then Mr. Leung submitted a declaration from Eric Moore, who is a detective at LAPD, who says the same thing. He essentially says that it's for purposes of law enforcement.

So if that's the case, it's my contention that you don't even get to *Burger*. The special needs doctrine doesn't kick in and the traditional Fourth Amendment law kicks in. And they just simply need a warrant. If there's no consent, they cannot simply demand records without a warrant.

Now, if we do get to *Burger* and if the special needs doctrine did apply, I might be willing to concede that this motel industry is a closely regulated industry. There does seem to be a pervasive scheme throughout the state statutes regulating the various aspects of the motel industry, and -- but even the substantial government interests, once again, has to be divorced from the immediate objectives of law enforcement, and there has to be some showing that the warrantless searches in some way are necessary for purposes of meeting that substantial governmental need, and I just don't see any showing of that sort.

I mean, why do the police need to have to go out there at any time or have the discretion to go out there at any time and be able to demand records for doing so? It just seems to me that warrantless searches here are not an area where you have, for example, drugs that can be destroyed. I mean, warrantless -- they can simply go through the judicial process or a subpoena process. And warrantless searches is just too much of a burden on the motel operator.

But even if they have met the substantial governmental need, even if they have a closely regulated business, *Burger* still requires that the ordinance, which is, in effect, a judicial substitute for a warrant, be limited as to time, place and scope.

Certainly, under the old ordinance, it seems to me that it's not limited as to time. It can be done at any time upon demand.

I disagree as to scope because scope doesn't even mean motel records. It's clearly defined in what they need to keep, but scope also means how many times they can come out there. It seems to me that scope is to be interpreted as can the police come out 24 times during the day, each hour on the hour, and just say that under the ordinance, we have the right to demand an inspection.

It seems that the notice requirements have to give some fair notice of regularity to the motel operator.

And then as far as place, at least under the old ordinance, that was not really clear. Mr. Leung is arguing, under the new ordinance, that it has to

be kept at the motel registration area. I'm not too strong one way or the other on that.

I would say, as an implied challenge, although we don't have it here, there's still an issue about many of these motels are designed in a way to get to that; can the police come into the motel registration area, which, in effect, goes through their personal residences, but certainly --

THE COURT: Does that mean that when people come in to register, they're going through the motel owner's personal --

MR. WEISER: No. I agree with you; that as far as the registration area itself, if the police officer comes to the motel registration desk -- there's usually a front desk, and there's a window separating the motel operator from the guest, and that is the area where they keep the cards.

So if the police come on the outside and say, We want to look at the cards, they give that through whatever -- I guess there's some opening there in the window that they can give it to the police. I think that's fine.

But if they're coming into the actual motel itself and they're passing through the residence area, I think that raises a whole host of other issues.

And I don't see the new ordinance as having addressed any of that. It seems to me we still have problems at least as to time and place -- time and scope.

If that's the case and *Burger* does kick in, and *Burger* still requires that there be that judicial -- which we contend is not in the old ordinance or the

new ordinance, I think the next real question is, is there a reasonable expectation of privacy in motel records. And that's been raised by Mr. Leung, and I raised that independently sua sponte throughout the course of the proceedings.

And I cited a case, *Cormeer vs. U.S.* (2000), a Ninth Circuit case. Clearly, the Ninth Circuit has ruled that the motel guests do not have a reasonable expectation of privacy in their records, but the *Cormeer* case was very clear that the reason why they don't have that is they don't have any possessory ownership interest in the cards.

So they cannot expect that if the government or the motel operator is going to divulge that information, that they have any Fourth Amendment protections in that regard.

But, clearly, the motel operator does have ownership and possession. These are his personal business records. And it's our contention -- I mean, these cards are not just used for purposes of 4149. I mean, it's common sense and common knowledge in the industry -- this is where I was going to put up a witness, if need be -- that these records are used for tax purposes.

I mean, you have to know how many people stayed, in how many rooms, at what rate; to compute your local what's called transient occupancy tax on a monthly basis for the city, for state taxes, federal taxes. If a motel operator -- if a motel guest comes back and wants a refund, you have to know who was staying in the room, when, at what rate. For insurance purposes, to verify income, for litigation purposes.

So it seems to me that the owners who have possession to these cards do have an expectation of privacy. They don't expect that tax authorities would simply be able to go out and ask for these records without a warrant.

And the same goes for 4149. We do have a reasonable expectation of privacy in the cards.

THE COURT: Well, it's sort of circular, isn't it? You don't have a reasonable expectation of privacy if you know the ordinance requires that you can make -- that you must make them available. You can have a different record, I suppose, for all those other purposes that you keep private so long as you keep the information required by the ordinance in the manner and in the place required by the ordinance.

MR. WEISER: But those are records that are kept -- the information on those records are not just kept for -- for the 4149 purposes.

THE COURT: From your client's perspective. They say, Okay. I have this record, and I'm keeping it here for this reason. Fine. You can do that.

Now, there's an ordinance. The ordinance says you have to do X, Y, and Z. If you want to do it in the same record, that's fine, but there's nothing in the ordinance that says, And, by the way, this has to be the same record in which you have an expectation of privacy because you're using it for something else.

MR. WEISER: Well, actually, the new ordinance does state that in keeping the records, the records are to be kept for the police a certain amount

of time, but there is no limitation on keeping the records for tax purposes; that the motel operator still has an obligation to keep it beyond that period of time for tax purposes.

That's in the new ordinance that was attached to Mr. Leung's papers. I think the city has recognized that the motel cards are used for purposes more than 4149.

THE COURT: Well, they may have recognized it, but it doesn't require it. I'm not buying your privacy argument.

MR. WEISER: Nevertheless, the Court is saying that if, in fact, you have an alternative to use other records to compile that information --

THE COURT: There's a record you're required to make by law by the City of LA for a certain purpose, so go ahead and make it. Nothing says you have to keep that particular record for all your other purposes for some privacy claim. I don't think you get to bootstrap it in that way.

MR. WEISER: Well, it seems to me that a privacy claim is a claim that arises out of the general -- the general standard and practice in the industry that the motel cards are, in fact, used for those purposes.

If we didn't have 4149 on the books, would motel operators still use motel registration cards? I think the answer is, clearly, yes. They still have to have a guest register. They would still have to have some basic information from the guest.

4149 is not applied in all cities, but motel cards are the standard in the industry. So it seems

to me that the motel cards go beyond the scope of just keeping them for law enforcement purposes.

THE COURT: Well, they do because that's what your clients are using them for. Maybe I'm wrong. I'll read whatever case law you have, but I'm not persuaded by that.

MR. WEISER: I would also point out, Your Honor, that the Fourth Amendment argument doesn't necessarily rely upon just the reasonable expectation of privacy, and that is, is that we cited a case, and, once again, continuingly through the course of these proceedings, the *Sodahl* case, *Sodahl vs. Cook County*, which is a 1994 U.S. Supreme Court case, and that was cited in the memorandum of contentions of law and fact at page 19.

But the *Sodahl* case was decided by the U.S. Supreme Court that said the Fourth Amendment protects not only reasonable expectations of privacy but possessory interests. When there's been meaningful interference with the possessory interest, that can be a violation of the Fourth Amendment.

It seems to me that is one of the underpinnings of *Cormeer* when *Cormeer* says that the motel guest has no -- well, the motel guest has no reasonable expectation of privacy, I'm assuming, because they don't have possessory interest, but here, independent of whether my clients have the reasonable expectation of privacy, they clearly own the cards, they certainly possess the cards, and I believe that implicates traditional Fourth Amendment concerns under the *Sodahl* case.

So that would be the basis of our argument. We do have a due process claim. I would just indicate to Your Honor that both ordinances seem to be -- still to be standardless.

Seems to me the big issue here is exactly what are the standards that the police apply for purposes of being able to determine when they come out, how they come out, what's the regularity of coming out. And that is one of the issues in a vagueness challenge; that there has to be fair notice to the owner, and it shouldn't encourage arbitrary law enforcement.

Now, of course, there is the issue of whether it is vague in all its applications. That's the Salerno standard. But that's been applied even under the Salerno standard; that the arbitrary law enforcement issue is vague in all its possible applications because before you have an application of the ordinance, you just can't determine when the police are going to come out there.

You don't know if they're going to come out there ten times a day, five times a day, four times a day. And we still don't have that addressed. Under the new ordinance, it does talk about, as much as possible, not disturbing the peace and quiet of the owner, but I don't see that as a standard.

It seems to me that at least under California law, even though that's not, obviously, binding on this Court, but in these administrative searches, under a case called *Cameron v. U.S.*, a 1967 U.S. Supreme Court case, *See v. City of Seattle*, which is a commercial premises case, a 1968 U.S. Supreme Court case, the California statutes adopted Code of

Civil Procedure 1822.50 which talked about that -- administrative warrants have to be executed between the hours of 8:00 and 6:00.

There still is the traditional concern that there's got to be some regularity or some fair notice to the owners. So it seems to me that without that standard built into the ordinance, you do have vagueness in all its possible applications.

And then as to the equal protection claim, there I'm not prepared -- it seems to me the new ordinance does address now the distinction between hotels and motels. I'm not really keen on that argument at this point anymore. It's really more the due process claim, but mainly the Fourth Amendment argument.

THE COURT: Okay.

MR. WEISER: Thank you.

I just wanted to say, Your Honor -- I'm sorry. At least for the evidentiary purposes, we have one of the executive committee members who was going to testify, if the Court wanted it to -- I had asked Mr. Leung for a stipulation on the matter, but he said he is not prepared to do that -- simply to indicate to the Court that they use the motel cards for other than 4149; as I said, tax purposes and all these other purposes.

THE COURT: Well, you're referring to them as 4149 cards. I don't know what that means. If you want to tell me that they have cards filled out that they use for some other purpose and they also contend that they satisfy the 4149 purposes, I'll accept that as your offer of proof. If you're -- I'm not

accepting that they have to do it that way, unless you have some evidence that they do.

MR. WEISER: I understand. That was the limitation of what I was going to -- I mean, I don't think the reasonable expectation of privacy argument -- if I understand the Court, it's not necessarily the subjective expectation of the owner, but what society is prepared to find is the expectation of privacy. But if the Court is willing to make that finding, then that's fine with us.

THE COURT: Well, I don't have any evidence of that, and if Mr. Leung isn't willing to stipulate to it, I guess I'll take evidence on it, though I don't know how relevant it's going to be to me.

Mr. Leung.

MR. LEUNG: Your Honor, we would object to that because it's not relevant. It's a waste of time because, as the Court has recognized, whether they have cards that satisfy tax purposes --

THE COURT: Okay. Stop. It's going to take five minutes, and as opposed to retrying this thing, put him on the stand and ask him the question.

Mr. Weiser.

(The oath was administered.)

THE WITNESS: I do.

THE CLERK: Thank you.

Please be seated.

THE COURT: All right. Please state your name and spell it for the record.

THE WITNESS: My first name is Braful. Last name is Bhakta. B-R-A-F-U-L, B-H-A-K-T-A.

THE COURT: Thank you. You may proceed.

BRAFUL BHAKTA,

was thereupon produced as a witness and, after having been first duly sworn on oath, was examined and testified as follows:

DIRECT EXAMINATION

BY MR. WEISER:

Q. Mr. Bhakta, can you tell us if you own a motel -- operate a motel in the City of Los Angeles?

A. Yes. I owned the motel since 1988.

Q. And what is the name of that motel?

A. Foxy's Motor Inn.

Q. Where is that located?

A. 7111 South Hoover Street, Los Angeles, California 90044.

Q. And are you a member of Los Angeles Lodging Association?

A. Yes, sir.

Q. And can you tell me your position with the association?

A. I'm the treasurer in the Los Angeles Lodging Association.

Q. I'd like to show you a document --

MR. WEISER: If I might approach, Your Honor.

THE COURT: Sure.

Has Mr. Leung seen it?

MR. WEISER: Yes. I've shown him.

THE COURT: Okay.

BY MR. WEISER: (Continuing)

Q. And tell me if you can identify the document.

A. This is a motel registration card.

Q. And can you tell me if that is a motel registration card that is used at your motel?

A. Yes.

Q. And can you tell me what the purpose of the information on the card is?

A. The purpose? The vendor customers check in. We just tell them to fill this registrations card; to put their name, their complete address, the license plate numbers, and the make of car, and how many people is checking in, and take their I.D., and let them sign the document that all the information is true, the room number to which we're going to give it to them, the date in/date out, the rate, tax, and the total amount we collected. Plus to get I.D.s and put their date of birth and I.D. numbers. And if they drive by the second car, we put their second car license plate numbers and make of car.

Thank you.

Q. What do you use these cards for?

A. We use for the tax purposes. End of the month, for occupancy tax for the City of Los Angeles; end of the years, for income tax purposes. For the fire and liability insurance. If they want to proof of income or occupancy rate or occupancy of the motel, they ask for the registration card. And sometime in the selling the motel, a buyer sometime ask the occupancy of the motel, so we have to give the proof.

THE COURT: How many times have you sold your motel where the buyer asked for the registration cards?

THE WITNESS: In this state?

THE COURT: How many times have you done this?

THE WITNESS: One time.

BY MR. WEISER: (Continuing)

Q. Are these cards used for purposes of four -- are you familiar with 4149 --

A. Yes, sir.

Q. -- of the Los Angeles Municipal Code?

A. Yes, sir.

Q. You understand that those are cards that have to be made available, information made available, to the Los Angeles Police Department?

A. Yes, sir.

Q. Are these cards the cards that are made available to the police department, also?

A. Yes, sir.

MR. WEISER: I have nothing further.

THE COURT: All right. Mr. Leung?

MR. LEUNG: Yes, Your Honor. Just one question.

CROSS EXAMINATION

BY MR. LEUNG:

Q. Good morning, sir.

A. Yes.

Q. Is there any reason why you cannot make separate cards to satisfy the ordinance 4149?

A. There's no separate cards because we have to put numbers on the cards; that No. 34 is used for the one person who rent a room. We cannot use another card, 35 numbers, for the same purpose. So only one card is we have to tell them to fill it up.

Q. I'm not sure I understand your response.

But is there any reason that you cannot make a card that has the same information that's required by LA Municipal Code 4149 on a separate piece of paper or separate card that satisfies the purposes of the ordinance?

A. It looks to me that filling two cards for different purposes, one for the Los Angeles Police Department, another for personal business use, it's very difficult for the operators, as well as for the customers.

MR. LEUNG: Nothing further, Your Honor.

THE COURT: Mr. Weiser?

MR. WEISER: Just one quick follow-up to Mr. Leung's question.

REDIRECT EXAMINATION

BY MR. WEISER:

Q. Mr. Bhakta, when police ask you, under 4149, to produce the cards, are they asking you for cards that are signed by the guests?

A. Yes.

Q. And which cards are those?

A. These are the registration card.

Q. Okay. So would that -- would that be a reason why you would have to keep it on one card, all the information?

THE COURT: We sort of call that a leading question, Mr. Weiser.

BY MR. WEISER: (Continuing)

Q. Okay. But the information that the police -- that they're asking on a 4149 is the actual -- what's filled out by the guest, correct?

A. Yeah.

MR. WEISER: Nothing further.

THE COURT: Mr. Leung?

MR. LEUNG: Nothing further Your Honor.

THE COURT: Thank you, sir.

THE WITNESS: Thank you.

MR. WEISER: If I could admit the registration card as an exhibit, Your Honor.

THE COURT: Sure.

Does that have personal information on it that should be redacted before I admit it as an exhibit in a public case?

MR. WEISER: I don't think so, Your Honor.

THE COURT: We have entirely separate requirements in the federal court about personal privacy.

MR. WEISER: Perhaps the -- does the Court want me to mark where that should be redacted?

THE CLERK: You can redact it and resubmit it. There's driver's license information on there.

MR. WEISER: What I've done, Your Honor, is I've -- all the personal information, I've asked that that be redacted.

THE COURT: Thank you.

Is that satisfactory, Mr. Pierson?

THE CLERK: Well, otherwise you're going to have the California driver's license at the top. The rest of it --

MR. WEISER: I think if there's an understanding that there was information on there of --

THE COURT: Let me see it. I don't even know what this is.

MR. WEISER: This is a registration card, Your Honor.

THE COURT: Well, it's not a registration card, because registration cards don't have these people's driver's licenses attached to them. So I don't know what the registration card is that this gentleman uses, and this doesn't show me.

MR. WEISER: This is the registration card I believe he's testified that they -- that he uses. And the driver's license is what they place on the back of the card for -- for purposes --

THE COURT: What they what?

MR. WEISER: Place. The motel operators place on the back of the card for purposes of --

THE COURT: Okay. But that's not what you -- I can't tell you what this is. It's a document that looks like it's been cut and pasted or something. It doesn't look to me like a registration card. I heard the testimony. As it is, it doesn't provide me any helpful information.

MR. WEISER: I would ask Mr. Bhakta just to come up and explain to us what it is, then.

THE COURT: Well, do you have a registration card, a blank registration card?

MR. WEISER: We don't have one on us here, no.

THE COURT: Okay. Well --

MR. WEISER: We can submit it to the Court. But this is a copy of a registration card that is used and filled out by motel operators, and when they do

is, is they place the driver's license on the back of the cards --

THE COURT: But that's not what this is.

MR. WEISER: This is a copy of the registration card.

THE COURT: Right. And it's not an accurate copy so I cannot tell from this what they do. And certainly from this, it doesn't suggest to me at all the argument that you're making.

MR. WEISER: I believe there is a copy of a blank registration card that Mr. --

THE COURT: I don't want a copy. I want an original. This is a case where it seems to me an original is appropriate.

MR. WEISER: Okay. We can certainly submit that to the Court, Your Honor.

Would the Court want, then, just a blank registration card that is used?

THE COURT: Yes.

MR. WEISER: Okay. That's fine.

THE COURT: All right. Mr. Leung?

MR. LEUNG: Thank you, Your Honor.

I just want to point out a few things, and I believe are brief. The city's brief sufficiently addresses the concerns and the issues presented by the plaintiffs.

Reasonable expectation of privacy, what we're looking at here are the names, addresses, vehicle identification number, dates that the guest checked

in/checked out, the method of payment, is that -- is a reasonable expectation of privacy. The city's position is that no, there is not.

In cases like *United States v. Willis*, 759 F.2d 1486, it's the government's --

(Interruption by reporter.)

THE COURT: You have my permission to talk directly to counsel and tell them they are behaving badly.

MR. LEUNG: I apologize.

United States vs. Willis, 759 F.2d 1486 (11th Cir.) (1985), that court tells us that name and address relate to identification rather than disclosure of private personal affairs. There's no reasonable expectation of privacy in information that's requested by the city.

With regards to a couple items that Mr. Weiser addressed, 4149 is not a tool for LAPD to go in there and look for criminal activity. It's not a case where we go -- LAPD goes in there and looks for prostitutes. That's not the purpose, and that's not what the --

THE COURT: The probably don't list their name, address, telephone number, and provide their driver's license when booking the room by the hour.

MR. LEUNG: And I think that's the whole purpose behind this, to require these individuals to do that, otherwise motel operators would not be allowed to rent rooms to individuals who refuse to provide their name, address --

THE COURT: I'm sorry. Are you saying that if we have this ordinance that would otherwise require them to do that, they won't rent rooms?

MR. LEUNG: Well, what the requirement that they need --

THE COURT: It's actually not they, generally, who rent the rooms, anyway, my understanding from my year in the Hollywood branch court, but that's probably something I shouldn't consider.

MR. LEUNG: My understanding is, is what -- the information that's required, that the information that -- the name, address, and information of that nature is required before they are able to rent a room. Now, if they don't have that information, they're in violation of 4149 for not obtaining that information.

THE COURT: The motel is?

MR. LEUNG: The motel, yes. I apologize.

And by requiring that, it reduces individuals who are reluctant to provide that information because of whatever.

THE COURT: That's my question. Are you suggesting that the gentlemen generally referred to as johns will not rent the room because they know that the law requires the motel owner to keep a record of all of this information, including their driver's license numbers?

MR. LEUNG: I'm not sure if the john will not rent it, but if the motel operators know that they're required to keep these names, and if they

don't have these names they're in violation, then I think it's an incentive on the part of the operators to say, Hey, give me your name; otherwise, we're not allowed to rent to you because we're not complying with 4149.

And I think that's different from LAPD going in there and saying, We're looking for motel registers cards, and, by the way, we're also looking for prostitutes, drugs, and everything else in between, under the guise of 4149.

THE COURT: So what you're -- your goal is to have motel owners act in a way that will cause them to decline to rent to people we assume are renting the rooms for unlawful purposes?

MR. LEUNG: Yes, Your Honor.

THE COURT: Okay.

MR. LEUNG: And also --

THE COURT: So how does -- so it's the threat that law enforcement will be able to come in and check the registers? I'm not sure -- I don't understand the connection between the ordinance and the goal.

MR. LEUNG: Well, if the operators require all this information and if the john or whomever else does not want to provide this information, then the operators can say, No, we do not want to rent to you --

THE COURT: Right.

MR. LEUNG: -- because you're not providing us the information that we need to comply with 4149.

THE COURT: And you need 4149 to incentivize this conduct in the motel operator? Is that what you're --

MR. LEUNG: Yes.

THE COURT: Okay.

MR. LEUNG: With regards to the issue of -- jumping to notice and scope that Mr. Weiser addressed, the *Burger* case, the statute in there doesn't have this requirement that the governmental entity can only come in between 9:00 to 5:00, or they can only come every day, two times a day. There isn't such a requirement.

And to have such a requirement would actually frustrate the purpose of having such an ordinance because you can have a scenario where -- let's say you limit this from 9:00 to 5:00 -- 9:00 a.m. to 5:00 p.m. That's when the officers can come in and take a look at these cards. Well, what happens between 5:01 p.m. and 8:49 a.m.? There's no incentive for the operators to take down any of this information.

A john can come in at ten o'clock at night, and an officer can be outside watching all this, and the motel operator has no incentive whatsoever to request this information from the john.

And the officers, if restricted in such a manner that they can only inspect between 9:00 a.m. and 5:00 p.m., can't go up to the operator say, Hey, I just saw someone check in. Can I take a look at the motel registration card? It would be precluded, and there would be no incentive, and it would frustrate the whole purpose of the ordinance.

Unless the Court has any other questions of me, I believe our brief does adequately address the issue presented by the plaintiff.

THE COURT: It does seem rather thorough. I do think that I need briefing both on standing and mootness before I spend my time reading all the rest of your briefing because I don't want to do anything I don't have to do.

MR. LEUNG: Yes, Your Honor.

Thank you, Your Honor.

THE COURT: We need to set a time frame.

MR. WEISER: May I be heard, very briefly, Your Honor?

THE COURT: Sure.

MR. WEISER: First of all, as far as a registration card, there is a registration card from Boulevard Motel that was attached by Mr. Leung to his amended trial brief, so --

THE COURT: Thank you.

MR. WEISER: -- the Court has that, Your Honor, in there. And although it's, apparently, a computer-generated registration card, it has similar information on it.

THE COURT: All right.

MR. WEISER: I would like to address very quickly the -- or briefly the -- this issue, which I'm still failing to see, about the goal and the issue of crime tied to law enforcement.

This is the declaration of Eric Moore that was submitted by Mr. Leung in his amended trial brief. He talks about his background and everything. And he said that he is assigned to the problems unit, and he talks about 4149, and the goal is to mitigate ongoing nuisance and crime issues at locations in which traditional means of enforcement do not resolve the issues. They only have a temporary effect in resolving the issues.

THE COURT: I bet some lawyer wrote that for him.

MR. WEISER: I understand.

But the interesting --

THE COURT: I'm not saying it's not true. It's just lawyer language and not detective language.

MR. WEISER: Yeah, I understand that.

But the ordinance -- the new amended ordinance, which has a preamble to it, says, Whereas, the first paragraph, some hotels or motels are responsible for a disproportionate share of police resources because of repeated calls for service and complaints of crimes, and this criminal activity is a real and compelling concern to the City of LA.

And then it talks about the City of LA has gone on to adopt it.

The second paragraph says, Where some motels offer shelter for parole violators, fugitives, and provide bases for the operation of criminal enterprises such as prostitution, manufacturing stolen identity documents, and trafficking of illegal narcotics, and then it says, whereas persons who

rent rooms for illegal purposes generally pay for the rooms with cash, do not have advanced reservations, and therefore requiring such persons to provide identification and preserve the rights of consumers to use hotels and motels for legitimate purposes while discouraging the use or hotel/motel rooms for illegal activities, particularly prostitution and narcotics offenses, and then goes further on with three more paragraphs, and then the amended ordinance, I don't see how one can make a plausible argument that the City of LA is using this ordinance simply to encourage or somehow give an incentive to the motel operator to fill out this information.

This is clearly tied to their law enforcement objectives for prostitution, narcotics. Directly tied with their enforcement program to curb those goals. Those are proper goals. Nobody denies that. Nobody denies that there are probably motels out there that are bad apples and have to be curbed in their activities, but its immediate objective is to provide evidence for law enforcement.

I mean, it's as clear as day. And if that's the case, the special needs doctrine just doesn't apply.

And what you have is *Burger* doesn't apply, as far as the requirements, and to have an ordinance that says that they can ask for these records without a warrant, without consent, upon demand is just per se violative of the Fourth Amendment.

Once again, to get to that issue, of course, you've got the reasonable expectation of privacy argument, which, of course, is the -- the argument that we've talked about earlier this morning; that is, I said, it seems to me, that -- Mr. Leung talks about

U.S. v. Willis, which is not a Ninth Circuit case, but the *Willis* case was also talking about a motel guest.

Nobody denies the motel guest doesn't have any reasonable expectation of privacy. They don't own them. They don't possess them. They can't claim that that information can't be provided, but that's different for purposes of the operator. The operator has the possessory interest. He has the ownership interest.

To believe that the police can just come and just demand at any time of the day and night to take them just, it see to me, flies in the face of traditional Fourth Amendment law. And the *Sodahl* case I think confirms that. You don't need, necessarily, even a reasonable expectation of privacy argument if there's some possessory interest in property.

Nobody says these motel records are not property. At least I don't think that's been said. It seems to me the one who owns it and possesses it, regardless of what their purposes of using it for is, still has some rights to those cards and cannot just be demanded, you know, carte blanche by police.

Now, if it was not a traditional law enforcement issue, then yes, I think *Burger* would kick in. But it is. I mean, you know, common sense tells you that. I mean both ordinances talk about this is to be made available to --

THE COURT: When you suggest to a judge that common sense says something, you should be really sure that it does; otherwise, the judge, who is sitting here thinking something different, just doesn't -- it's not a great argument.

MR. WEISER: I didn't mean anything to Your Honor by that.

THE COURT: No, no. And I didn't take it that way. It just always strikes me when lawyers say that.

MR. WEISER: Well, let me --

THE COURT: "I don't know how you can take it any other way, Your Honor," when I'm sitting up here thinking exactly the opposite.

MR. WEISER: Well, let me say this: That the law -- I guess I take -- after so many years -- and I've argued many time before the circuit, and I have some published work.

THE COURT: You may argue it again.

MR. WEISER: But I will say that common sense probably is, in some sense – in physics, one can say that there are many issues. You know, Einsteinian relativity physics, quantum mechanics are counterintuitive and don't make sense -- common sense. Doesn't work necessarily in math and physics.

But in some sense, it seems to me, in law, I just can't take that abstract of a notion that you have an ordinance in front of you, the ordinance says what it says, the detective says what he says, you see the ordinance says that it's made available to law enforcement -- why is it made available to law enforcement? Why isn't it made available to any other governmental officials? The preamble says what it says.

Put it this way: A reasonable inference is, is that the immediate objective is tied to law enforcement.

THE COURT: Much better way to put it.

MR. WEISER: Okay.

THE COURT: When can you have your briefing on the mootness and standing?

MR. WEISER: Your Honor, would it be possible -- I mean, since we concluded here, just because my father went into the hospital --

THE COURT: I understand that. I'm sorry.

MR. WEISER: Perhaps two weeks. I know the holidays are coming.

THE COURT: I'm not in any hurry.

MR. WEISER: Perhaps even early January, if that's okay.

THE COURT: Mr. Leung, you don't care how long it takes for me to invalidate your ordinance. Do you?

MR. LEUNG: That's fine, Your Honor.

THE COURT: The Court is laughing.

As I sit here, I have absolutely no idea of the merits, and hope never to get to that because if there's no standing or the case is moot, then I don't mind not working on it, but -- not that it won't eventually come here as soon as somebody tries to enforce it against some motel.

And I suppose that's a separate case anyway, unless I invalidate it, right?

MR. WEISER: We tried to streamline this litigation. I know Your Honor --

THE COURT: Can't we put this in abeyance and go have one of your officers go to -- so we have an actual case?

MR. WEISER: I guess Mr. Yagman or some people have different tastes on how these kinds of cases would happen. It seemed to me that we were dealing more with a legal issue. And I think that had we tied up the Court's time -- I mean, I've litigated many police cases. I've litigated jury trials. But it seems to me if we tied up the Court's time with a bunch of evidence, and then we get to the same issue which it's all founded on, it would have wasted a lot of --

THE COURT: Well, no. I'm just saying we don't have an as-applied challenge.

MR. WEISER: Not at this point. On the new ordinance -- on the old ordinance, it wasn't the sense as applied. There was a stipulation that there was -- police were coming in and demanding cards, and continuing to do so, without consent or warrant, and could do so under 4149.

THE COURT: All right. Well --

MR. WEISER: There hasn't been an application, as far as I know of --

THE COURT: Okay. Take the time you need. Your father's in the hospital, and it's the holidays, so take whatever time you --

MR. WEISER: A month would be fine with me, Your Honor.

THE COURT: Okay. And how much time would you like to respond?

MR. LEUNG: Two weeks after --

THE COURT: Okay. So why don't we have January 7th.

MR. WEISER: That's fine, Your Honor.

THE COURT: And then whatever -- January 21. I don't know if that's a weekday.

THE CLERK: Make that the 22nd.

THE COURT: January 22.

THE CLERK: File it on the 8th, which is a Monday. The 7th is a Sunday.

THE COURT: All right. Thank you very much.

(Proceedings concluded at 10:25 a.m.)

CERTIFICATE

I hereby certify that the foregoing is a true and correct transcript from the stenographic record of the proceedings in the foregoing matter.

/s/Bridget R. Montero
Bridget R. Montero
CA CSR No. 10020

Date: November 13, 2014

FILED
CLERK, U.S. DISTRICT COURT
MAY 29 2007
CENTRAL DISTRICT OF CALIFORNIA
BY /s/ DEPUTY

UNITED STATES DISTRICT COURT
CENTRAL DISTRICT OF CALIFORNIA

CASE NO. CV 05-1571 DSF (AJWx)
[consolidated with CV 03-3610 DSF (AJWx) & CV 04-2192 DSF (AJWx)]

NARANJIBHAI PATEL,
RAMILABEN PATEL,

Plaintiffs,

vs.

THE CITY OF LOS ANGELES, ET AL.,

Defendants.

ORDER FOLLOWING DECEMBER 7, 2006 BENCH TRIAL

DOCKETED ON CM
MAY 30 2007
BY /s/ 022

I. Introduction

A. Factual Background

Naranjibhai Patel and Ramilaben Patel (the "Patel Plaintiffs"), Rameshbhai C. Bhakta, Manharbhai G. Bhakta, Sarojben D. Bhakta, Rajendrakumar N. Bhakta, and Manjula Bhakta (the "Bhakta Plaintiffs") are owners and operators of

motels in the City of Los Angeles. Plaintiffs claim that they have been subject to and continue to be subject to unreasonable searches and seizures pursuant to Los Angeles Municipal Code ("LAMC") § 41.49.[1] Plaintiffs bring claims under 42 U.S.C. § 1983 for violation of their rights under the Fourth, Fifth, and Fourteenth Amendments to the United States Constitution as well as the Due Process Clause and Equal Protection Clause of the Fourteenth Amendment.

The three complaints, which have been consolidated, were filed on May 21, 2003, March 30, 2004, and March 2, 2005. The Patel Plaintiffs allege that, on March 4, 2003 and September 9, 2003, certain Los Angeles Police Department ("LAPD") officers conducted motel registration checks at their motel, the Rio Palace Motor Inn, pursuant to LAMC § 41.49. The Bhakta Plaintiffs allege that on August 17, 2002, September 14, 2002, October 31, 2002, and February 24, 2002, pursuant to LAMC § 41.49, certain LAPD officers conducted motel registration checks at their motel, the Boulevard Motel. At each of these registration checks, certain of the named Plaintiffs were cited for violation of LAMC § 41.49(b), failure to maintain a register.

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[1] The First Amended Complaint in *Rajendrakumar N. Bhakta, et al. v. City of Los Angeles, et al.*, CV 03-3610 also names approximately 36 additional motel owners/operators and the Los Angeles Lodging Association ("LALA") as Plaintiffs. These additional Plaintiffs do not allege that they were at any time subjected to a motel registration check pursuant to LAMC § 41.49.

Each of the above-mentioned registration checks was conducted pursuant to the following version of LAMC § 41.49 (the "original ordinance"), which was in effect at the time:

> Every person who owns or operates a motel shall keep a register in which shall be entered:
>
> (a) The name and address of each guest, and the name and address of each member of his party
>
> (b) In the event that such guest or his party travels by means of motor vehicle, the register shall specify the make, type and license number of the motor vehicle and the year of registration. Said register shall at all times be open for inspection to all police officers.

L.A., Cal. Municipal Code § 41.49 (1964) (amended by Ord. No. 177,966, Effective December 2, 2006).

On December 2, 2006, the above ordinance was repealed, and an amended LAMC 41.49 (the "amended ordinance") became effective. The amended ordinance provides, in relevant part:

> 2. **Hotel Record Information.**
>
> (a) Every operator of a hotel shall keep a record in which the following information shall be entered legibly, either in electronic, ink or typewritten form prior to the room being furnished or rented to a guest:

(1) (I) The name and address of each guest and the total number of guests; (ii) The make, type and license number of the guest's vehicle if the vehicle will be parked on hotel premises; and (iii) Identification information as required by Subsection 4.(a) and (b) of this section, all of which shall be as provided by the guest in response to an inquiry or by other means.

(2) The day, month, year and time of arrival of each guest.

(3) The number or other identifying symbol of location of the room rented or assigned each guest.

(4) The date that each guest is scheduled to depart.

(5) The rate charged and amount collected for rental of the room assigned to each guest.

(6) The method of payment for the room.

(7) The full name of the person checking in the guest or other identifying symbol if the alternative procedure specified in Subsection 2.(a) is utilized.

3. **Maintenance of Hotel Record.** Every operator of a hotel

> shall comply with the following requirements for maintaining the hotel record.
>
> (a) The record shall be kept on the hotel premises in the guest reception or guest check-in area or in an office adjacent to that area. The record shall be maintained at that location on the hotel premises for a period of 90 days from and after the date of the last entry in the record and shall be made available to any officer of the Los Angeles Police Department for inspection. Whenever possible, the inspection shall be conducted at a time and in a manner that minimizes any interference with the operation of the business.

L.A., Cal. Municipal Code § 41.49 (amended by Ord. No. 177,966, Effective December 2, 2006). In addition, the amended ordinance provides detailed definitions for purposes of the section, including the following definition of "Hotel":

> Hotel means any public or private space or structure, including but not limited to, any inn, hostelry, tourist home, motel, lodging house or motel rooming house offering space for sleeping or overnight accommodations in exchange for rent and for a period of less than 30 days. Hotel includes the parking lot and other common areas of

> the hotel. Hotel does not include living accommodations provided at any governmental or nonprofit institution in connection with the functions of that institution.

Id.

B. Procedural History

On May 21, 2003, Plaintiffs filed their Complaint in *Rajendrakumar N. Bhakta, et al. v. City of Los Angeles, et al.*, CV 03-3610. The case was assigned to Judge King. Plaintiffs filed their First Amended Complaint on August 19, 2003. On December 10, 2003, the case was transferred to this Court for all further proceedings.

On March 30, 2004, Plaintiffs filed their Complaint in *Rameshbhai C. Bhakta, et al. v. City of Los Angeles, et al.*, CV 04-2192. The case was assigned to Judge Pregerson. On April 19, 2004, the case was transferred to this Court for all further proceedings.

On March 2, 2005, Plaintiffs filed their Complaint in *Naranjibhai Patel, et al. v. City of Los Angeles, et al.*, CV 05-1571. The case was assigned to Judge Feess. On March 17, 2005, the case was transferred to this Court for all further proceedings. On July 1, 2005, Plaintiffs filed their First Amended Complaint.

On February 17, 2006, the Parties filed a Stipulation to Consolidate and Dismiss by which the following three cases were consolidated: *Rajendrakumar N. Bhakta, et al. v. City of Los Angeles, et al.*, CV 03-3610, *Rameshbhai C. Bhakta,*

et al. v. City of Los Angeles, et al., CV 04-2192 and *Naranjibhai Patel, et al. v. City of Los Angeles, et al.*, CV 05-1571. The Parties further stipulated to the dismissal without prejudice of all individual defendants. Finally, pursuant to the Stipulation, the Parties agreed that the sole issue in the consolidated action is the constitutionality of LAMC § 41.49 and that there are no damages or *Monell* claims.

On December 7, 2006, this Court held and completed a Bench Trial at which it ordered Plaintiffs and the City to submit supplemental briefs on the issues of standing and mootness by January 8, 2007 and January 22, 2007, respectively.

On January 19, 2007, the City filed its Supplemental Trial Brief on the Issue of Standing.[2]

II. Discussion

A. Legal Standard for Mootness

"A case is moot when the issues presented are no longer live or the parties lack a legally cognizable interest in the outcome." *Jacobus v. Alaska*, 338 F.3d 1095, 1102 (9th Cir. 2003) (internal quotation marks omitted). "[D]ismissal of a case on grounds of mootness would be justified only if it were absolutely clear that the litigant no longer had any need of the judicial protection that it sought." *Id.* (internal quotation marks omitted).

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[2] Plaintiffs did not timely file their Supplemental Trial Brief. However, at Plaintiffs' request, this Court granted Plaintiffs an extension until March 12, 2007. Once again, Plaintiffs did not timely file their brief and, as of the date of this Order, Plaintiffs have made no attempt to do so.

"Where intervening legislation has settled a controversy involving only injunctive or declaratory relief, the controversy has become moot." *Chem. Producers and Distrib. Ass'n v. Helliker*, 463 F.3d 871, 875 (9th Cir. 2006) (internal quotation mark omitted). However, "[t]he repeal of a challenged ordinance does not render a case moot where the new ordinance adopted in its place is substantially the same as the challenged ordinance or disadvantages plaintiff 'in the same fundamental way.'" *Covenant Media of Cal., L.L.C. v. City of Huntington Park, Cal.*, 377 F. Supp. 2d 828, 840 (C.D. Cal. 2005) (citing *Ne. Fla. Chapter of Associated Gen. Contractors of Am. v. City of Jacksonville*, 508 U.S. 656, 662 (1993)); *see also Get Outdoors II, L.L.C. v. City of Lemon Grove, Cal.*, 378 F. Supp. 2d 1232, 1238 (S.D. Cal. 2005) (citing *Ne. Fla. Chapter of Associated Gen. Contractors*, 508 U.S. at 662, for the proposition that "repeal of a statute does not moot a case where a city has already replaced a repealed ordinance with one that is substantially similar."). Where the original ordinance has been "sufficiently altered so as to present a substantially different controversy" there is no basis for concluding that the challenged conduct is being repeated. *Chem. Producers*, 463 F.3d at 875 (citing *Ne. Fla. Chapter of Associated Gen. Contractors*, 508 U.S. at 662 n.3).

B. Analysis

On December 7, 2006, the Court held a one-day bench trial. The Court discussed with the parties the fact that, as of December 2, 2006, the original ordinance, on which Plaintiffs' claims are based, had been replaced with the amended

ordinance. In response to the Court's inquiry, Plaintiffs asserted that they were before the Court on both the original ordinance and the amended ordinance. Specifically, Plaintiffs argued that, as to "the issue of police coming and inspecting motel registration cards upon demand even if no consent is given without a warrant" there is still a live case in controversy regarding the old ordinance that has "spilled over into the new ordinance." Thus, Plaintiffs contend that this Court can still grant declaratory relief as to the original ordinance. While they argued that they were also before the Court on the amended ordinance, Plaintiffs acknowledged that they have not filed a complaint regarding the amended ordinance. Although the Court granted Plaintiffs' request to brief the issues of mootness and standing, Plaintiffs failed to do so.

At the bench trial, the City argued that, because no monetary damages are being sought, it "basically would be an academic exercise" for the Court to rule on the old ordinance. Thus, the City contends that "at most this is a facial challenge" of the amended ordinance. Additionally, in its supplemental brief, the City argues that Plaintiffs lack standing to challenge the amended ordinance.

The Court finds that the primary question is whether Plaintiffs' claims are moot due to the amendment of LAMC § 41.49. The City has not argued that Plaintiffs' claims are moot as they relate to the provision of LAMC § 41.49 allowing LAPD officers to conduct warrantless inspections of motel registration cards on demand. Nevertheless, "mootness goes to the court's power to hear the case, and therefore may be raised at any time by the

parties, or even sua sponte by the court under its independent obligation to ensure that it has authority under Article III." *S. Or. Barter Fair v. Jackson County, Or.*, 372 F.3d 1128, 1133 n.8 (9th Cir. 2004). Plaintiffs allege that the original ordinance violates their constitutional rights in three ways. First, it violates their rights under the Due Process Clause of the Fourteenth Amendment to the United States Constitution. Second, it violates their right to equal protection of the laws under the Equal Protection Clause. Third, Plaintiffs allege that the original ordinance violates their constitutional right under the Fourth Amendment to be free from unreasonable searches and seizures. Before addressing the substantive aspects of these claims, the Court must determine whether each of Plaintiffs' claims is moot. Specifically, the Court must determine whether, in light of the amended ordinance, a live case or controversy still exists with respect to these claims.

As a general rule, "where intervening legislation has settled a controversy involving only injunctive or declaratory relief, the controversy has become moot." *Chem. Producers*, 463 F.3d at 875. But "a defendant's voluntary cessation of a challenged practice does not deprive a federal court of its power to determine the legality of the practice" where the government entity is free to reenact the law at a later date. *Id.* at 877 (quoting *City of Mesquite v. Aladdin's Castle, Inc.*, 455 U.S. 283, 289 (1982)). "Cessation of illegal conduct does, however, render a controversy moot where there is no reasonable expectation that the putatively illegal conduct will be repeated, and there are no remaining

effects of the alleged violation." *Covenant Media*, 377 F. Supp. 2d at 834.

In order to determine whether intervening legislation has settled the controversy, a Court must determine whether the new ordinance is sufficiently similar to the prior ordinance to indicate that the challenged conduct continues. *Id.* Where the original ordinance has been "sufficiently altered so as to present a substantially different controversy there is no basis for concluding that the challenged conduct [is] being repeated." *Id.*

1. Due Process

Plaintiffs allege that the original ordinance is unconstitutionally vague in that it does not provide fair notice of the practice to be avoided because (1) it does not specify where law enforcement may inspect the register or whether it allows entry into an area where the owner or operator resides and may keep such register. (First Amended Complaint in *Patel, et al. v. City of Los Angeles*, CV 05-1571 ("FAC"), ¶13); (2) it does not specify for what period of time an owner or operator must retain such records, and for what period of time such register records must be open for inspection by law enforcement. (FAC ¶ 14); and (3) it does not provide minimal guidelines to govern LAPD officers as to where they may inspect records, whether that includes entry without a warrant into the motel area where an owner or operator resides and keeps the register, and the period of time for which an owner/operator must retain the records and keep them open for inspection by LAPD officers. (FAC ¶ 15). Plaintiffs also argue in their Memorandum of Contentions of Fact and

Law that the original ordinance does not meet due process requirements because it "fails to limit the time, place and scope of the warrantless inspections." (Plaintiffs' Memorandum of Contentions of Facts and Law in *Patel, et al. v. City of Los Angeles,* CV 05-1571 ("Plaintiffs' Mem."), 19:23-26).

The amended ordinance corrects these alleged "flaws" in the original ordinance. As to Plaintiffs' complaint that the original ordinance does not specify where LAPD officers may inspect motel registers and whether they may do this in the area where motel owners/operators reside, the amended ordinance expressly states that the registers "shall be kept on the hotel premises in the guest reception or guest check-in area or in an office adjacent to that area." LAMC § 41.49(3)(a). Therefore, the amended ordinance makes clear that LAPD officers may inspect the records in these areas and that, unless motel owners/operators have chosen to reside in an "office adjacent to" the guest check-in or reception area, LAPD officers should not be entering their residence.

Plaintiffs' complaint that the original ordinance does not specify the time period for which motel owners/operators must retain these records is also addressed in the amended ordinance. Specifically, the amended ordinance provides that "[t]he record shall be maintained at that location on the hotel premises for a period of 90 days from and after the date of the last entry in the record " *Id.*

Plaintiffs have submitted no evidence that the City plans to repeal the amended ordinance and

replace it once again with a less-detailed ordinance. Indeed, Plaintiffs appeared to concede at trial that their claims are moot in this regard. Therefore, the Court finds that the amended ordinance has "sufficiently altered" the original ordinance "so as to present a substantially different controversy" and that, as a result, "there is no basis for concluding that the challenged conduct" will be repeated. Accordingly, this action is moot with respect to Plaintiffs' Due Process claims.

2. Equal Protection

Plaintiffs contend that the original ordinance violates their right to equal protection of the laws under the Equal Protection Clause, because it applies only to motels and not to hotels. (FAC ¶ 21). Plaintiffs argue that there is no rational basis for this legislative distinction. (FAC ¶ 22).[3]

In its First Amended Trial Brief, the City argued that Plaintiffs' Equal Protection claims are moot, because the amended ordinance eliminates the distinction between hotels and motels. Plaintiffs acknowledged this at trial and made no argument to the contrary. Furthermore, the Court agrees with the City's position. Accordingly, the Court finds that this action is moot as it relates to Plaintiffs' Equal Protection claims.

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[3] In the operative complaint, Plaintiffs also assert that the original ordinance violated their rights under the Equal Protection Clause, because the LAPD conducted multiple inspections of their motels rather than inspecting other motels in the City. However, Plaintiffs did not raise this issue at trial.

3. Unreasonable Search and Seizure

Finally, Plaintiffs contend that the original ordinance authorizes warrantless inspections of motel registers at all times of the day and night in violation of their Fourth and Fourteenth Amendment rights to be free from unreasonable searches and seizures. Specifically, Plaintiffs argue that this provision allowing for warrantless inspections violates their rights because (1) the motel industry is not a "closely regulated" industry; (2) there is no substantial government interest or special need beyond the normal need for law enforcement; (3) the warrantless inspection scheme under LAMC § 41.49 is not necessary to further the objectives of the regulatory scheme; and (4) the original ordinance does not limit the discretion of officers as to the time, place, and scope of the inspection. (FAC ¶ 19).

At trial, Plaintiffs argued that their Fourth Amendment claim is not moot, because the amended ordinance continues to allow for warrantless inspections of motel registers. The City has not argued otherwise. Without addressing the substantive aspects of the claim, this Court agrees with Plaintiffs that a controversy remains under the amended ordinance as to whether these warrantless inspections violate Plaintiffs' rights under the Fourth Amendment.[4] Because the original

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[4] As to Plaintiffs' specific arguments, the Court reiterates that the amended ordinance has addressed Plaintiffs' complaints regarding the place and scope of inspection.

ordinance has not been sufficiently altered to eliminate Plaintiffs' concerns, the Court finds that the action is not moot as it relates to Plaintiffs' Fourth Amendment claim only.

Nevertheless, the Court finds that it would be improper, and as the City points out, a mere academic exercise, for it to grant declaratory or injunctive relief as to the original ordinance with no complaint on file regarding the amended ordinance. *See Covenant Media*, 377 F Supp. 2d at 840-43 (citing *Church of Scientology Flag Serv. Org., Inc. v. City of Clearwater*, 777 F.2d 598, 604-06 (11th Cir. 1985), in which the court held that "where the challenged ordinance was repealed and replaced with a new ordinance prior to consideration by the district court, the district court erred in proceeding to declare the unconstitutionality of the repealed ordinance."). Therefore, the Court declines to address the merits of Plaintiffs' Fourth Amendment claim at this time. Should Plaintiffs wish to continue with their Fourth Amendment claim under the amended ordinance, this Court grants them leave to amend their Complaint to add such a claim.

III. Conclusion

For the foregoing reasons, the Court dismisses as moot Plaintiffs' claims for violation of their rights under the Due Process Clause and the Equal Protection Clause of the Fourteenth Amendment. Should they wish to proceed with their Fourth Amendment claim under the amended ordinance, Plaintiffs may file an amended complaint within 21 days from the date of this Order. If Plaintiffs do not timely file an amended complaint, the Court will

dismiss the remainder of the action without prejudice.

IT IS SO ORDERED.

DATED: 5-29-07

/s/ Dale S. Fischer
DALE S. FISCHER
United States District Judge

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RAMILABEN PATEL

UNITED STATES DISTRICT COURT
CENTRAL DISTRICT OF CALIFORNIA

No. CV05-01571-DSF (AJWx)

[consolidated with CV 03-3610 DSF (AJWx) & CV 04-2192 DSF (AJWx)]

FILED
CLERK U.S. DISTRICT COURT
JUNE 19 2007
CENTRAL DISTRICT OF CALIFORNIA
BY /s/ DEPUTY

NARANJIBHAI PATEL; RAMILABEN PATEL,

Plaintiffs,

vs.

CITY OF LOS ANGELES, a municipal corporation; CITY OF LOS ANGELES POLICE CHIEF WILLIAM BRATTON; CITY OF LOS ANGELES POLICE OFFICER LOPEZ, Badge No. 31911 No. 33002, sued as DOE 1; CITY OF LOS ANGELES POLICE OFFICER SANCHEZ, Badge No. 32705, sued as DOE 2; CITY OF LOS ANGELES POLICE OFFICER MARISCO, Badge No. 32006, sued as

DOE 3; CITY OF LOS ANGELES POLICE OFFICER GALLEGOS, Badge No. 33847, sued as DOE 4; CITY OF LOS ANGELES POLICE OFFICER KOVAL, Badge No. 32668, sued as DOE 5; CITY OF LOS ANGELES POLICE OFFICER VARGAS, Badge No. 31332, sued as DOE 6; CITY OF LOS ANGELES POLICE OFFICER DAVILA, Badge No. 31802, sued as DOE 7; and DOES 8 THROUGH 10 INCLUSIVE,

Defendants.

SECOND AMENDED COMPLAINT FOR DAMAGES AND DECLARATORY AND INJUNCTIVE RELIEF

[Violation of Federal and Civil Rights]

DEMAND FOR JURY TRIAL

DOCKETED ON CM
JUNE 29 2007
BY _____ 022

Pursuant to the Court's Order of May 29, 2007, Plaintiffs NARANJIBHAI PATEL and RAMILABEN PATEL ("Plaintiffs" or collectively "Patel") as a Second Amended Complaint against Defendants, state and allege as follows:

JURISDICTION AND VENUE

1. Jurisdiction of the federal court exists pursuant to 28 U.S.C. Section 1331 and 28 U.S.C. Section 1343(a)(3). This action, which arises under the laws and Constitution of the United States, specifically, the Fourth and Fourteenth

Amendments, involves violations of federal law, actionable pursuant to 42 U.S.C. Section 1983.

2. Venue is proper in this District pursuant to 28 U.S.C. Section 1391(b) in that Defendant CITY OF LOS ANGELES ("City"), is a public entity in this District, the Individual Defendants are employees of the City and reside in this District, and the claims arose in this District.

PARTIES

3. Plaintiffs, who are husband and wife were at all times material herein the owners and operators of a motel named the Rio Palace Motor Inn (the "Motel") located at 10424 South Broadway, Los Angeles, California 90003. Plaintiffs are the on-site managers of the Motel who reside at the motel.

4. Defendant CITY OF LOS ANGELES ("Defendant" or "City") is a municipal corporation organized and existing under the Constitution and laws of the State of California.

5. Defendant CITY OF LOS ANGELES POLICE CHIEF WILLIAM BRATTON ("Chief Bratton") was at all times material herein the Police Chief of the City of Los Angeles Police Department ("LAPD"). Chief Bratton is sued in his individual and official capacity.

6. Defendants CITY OF LOS ANGELES POLICE OFFICER LOPEZ, Badge No. 31911, sued as DOE 1 ("Officer Lopez"), CITY OF LOS

ANGELES POLICE OFFICER SANCHEZ, Badge No. Sanchez, sued as DOE 2 ("Officer Sanchez"); CITY OF LOS ANGELES POLICE OFFICER MARISCO, Badge No. 32006, sued as DOE 3 ("Officer Marisco"); CITY OF LOS ANGELES POLICE OFFICER GALLEGOS, Badge No. 33847, sued as DOE 4 ("Officer Gallegos"); CITY OF LOS ANGELES POLICE OFFICER KOVAL, Badge No. 32668, sued as DOE 5 ("Officer Koval"); CITY OF LOS ANGELES POLICE OFFICER VARGAS, Badge No. 31332, sued as DOE 6 ("Officer Vargas"); and CITY OF LOS ANGELES POLICE OFFICER DAVILA Badge No. 31802, sued as DOE 7 ("Officer Davila") were at all times material herein police officers and employees of the LAPD. At present, plaintiffs do not know the first names of said defendants.

7. The true names and capacities, whether individual, corporate, associate or otherwise, herein named as DOES 8 through 10, and persons heretofore unknown involved in the actions taken against plaintiffs are unknown to plaintiffs at this time. Plaintiffs are informed and believe and based thereon allege that each of the DOE defendants is responsible in some manner for the occurrences herein referred to, and that plaintiffs' injuries and damages as herein alleged were proximately caused by those defendants. Plaintiffs sue said defendants by such fictitious names on the grounds that the true names and capacities of said defendants are unknown to them at this time. Plaintiffs will amend this complaint as and when the true names and capacities of said DOE defendants are ascertained.

Each reference in this complaint to "defendant," "defendants" or a specifically named defendant also refers to defendants sued under fictitious names.

BACKGROUND FACTS COMMON TO ALL CLAIMS

8. On March 4, 2003, Officers Marisco, Lopez and Sanchez conducted a motel registration check at the Motel pursuant to Los Angeles Municipal Code ("LAMC") 41.49. Without plaintiffs consent, authorization of said plaintiffs, or an administrative or any other type of warrant or court order, these officers, and each of them, entered onto the motel and further entered where plaintiffs reside, and in the course of the inspection, inspected and seized motel registration cards, and arrested and cited Plaintiff Ramilaben Patel without probable cause for a criminal violation of LAMC 41.49(b), failure to maintain a register, but such citation was eventually dismissed and no charges were filed.

9. On September 9, 2003, Officers Gallegos, Koval and Marisco conducted a motel registration check at the Motel pursuant to Los Angeles Municipal Code ("LAMC") 41.49. Without plaintiffs consent, authorization of said plaintiffs, or an administrative or any other type of warrant or court order, these officers, and each of them, entered onto the motel and further entered where plaintiffs reside, and in the course of the inspection, inspected and seized motel registration cards, and arrested and cited Plaintiff Naranjibhai Patel without probable cause for a criminal violation of LAMC 41.49(b), failure to maintain a register, but such

citation was eventually dismissed and no charges were filed.

10. On February 18, 2004, Officers Vargas and Davila were working in an undercover capacity and investigating motels in the area of the Motel for disorderly house violations. On said date, an undercover operation for disorderly house violations was conducted at the Motel by said officers. Without plaintiffs consent, authorization of said plaintiffs, or an administrative or any other type of warrant or court order, these officers, and each of them, entered onto the motel and further attempted to rent a room at the Motel, and without probable cause, arrested and cited Plaintiff Naranjibhai Patel for violation of Penal Code 316, and in doing so entered where plaintiffs reside. Such citation was eventually dismissed and no charges were filed.

11. In addition to the above, on December 2, 2006, the City amended LAMC 41.49, a copy of which is attached hereto as Exhibit "A"

12. Pursuant to said ordinance, the City and LAPD continues to allow for warrantless inspections of the motel owners and operators motel registers subject to criminal penalties if not allowed by the owner and operator, and pursuant to said ordinance, and after its adoption and after it went into effect, the City and LAPD, and various police officers have come onto the plaintiffs motel and conducted warrantless inspections of plaintiffs' motel register without their consent. Pursuant to said ordinance and after its adoption and after it went

into effect, the City and LAPD, and various police officers have come also onto various plaintiffs' motels of the related Los Angeles Lodging Association ("LALA") and conducted warrantless inspections of plaintiffs' motel register without their consent in consolidated cases numbers CV 03-3610 DSF (AJWx) and CV04-2192 DSF (AJWx).

Based on the above facts, plaintiffs allege the following claims:

FIRST CLAIM FOR RELIEF

(Violation of Civil Rights Under 42 U.S.C. Section 1983 by All Plaintiffs Against All Defendants)

13. Plaintiffs reallege and incorporate herein by reference to each and every allegation contained in Paragraphs 1 through 12, and all its subparts, inclusive, as set forth hereinabove.

14. Plaintiffs are informed and believe, and based upon such information and belief allege, that in doing all of the things herein mentioned, defendants, and each of them, acted under color of the statues, regulations, customs and usages of the City of Los Angeles and the State of California for purposes of "state action" under 42 U.S.C. Section 1983.

15. Plaintiffs are further informed and believe, and based upon such information and belief allege, that by taking the actions hereinabove alleged in paragraphs 1–12 above, defendants, and each of them, violated and continue to threaten to

violate the constitutional and civil rights of plaintiffs, in particular to their rights under the Fourth Amendment as incorporated by the Fourteenth Amendment of the United States Constitution to be free from unreasonable searches and seizures of their person or property; and furthermore, that LAMC 41.49 both on its face in all its applications, and as applied to plaintiffs, is in violation of the Fourth Amendment for the reasons stated above.

16. Defendant City in engaging in the above-described conduct, is liable as it acted according to official policy, custom and practice of the City. The individual defendants are not entitled to qualified immunity as they violated plaintiffs' constitutional and civil rights, and in doing so violated clearly established law in a manner that was unreasonable under the circumstances.

17. As a proximate result of the foregoing acts of defendants, and each of them, plaintiffs have suffered and continue to suffer extreme economic and non-economic damages, including but not limited to severe emotional distress and unreasonable intereference [*sic*] with their motel business according to proof at trial. Plaintiffs are informed and believe, and based upon such information and belief alleges, that the damages they have suffered and continue to incur is at least $1,000,000 per each individually named plaintiff; and that plaintiffs are entitled to punitive and exemplary damages for the conduct of the individually named defendants; and are also entitled

to a declaration that LAMC 41.49 is unconstitutional on its face and as applied in violation of plaintiffs' constitutional rights as set forth above. The plaintiffs are entitled to their reasonable attorneys fees under 42 U.S.C. section 1988.

WHEREFORE, Plaintiffs and Plaintiffs in consolidated case numbers CV 03-3610 DSF (AJWx) and CV 04-2192 DSF (AJWx) pray judgment against Defendants, and each of them, as follows:

FIRST CLAIM FOR RELIEF

1. For damages according to proof at trial but not less than $1,000,000.00 per each individually named Plaintiff;
2. For declaratory and injunctive relief;
3. For punitive damages against the individual defendants;
4. For attorney's fees pursuant to 42 U.S.C. Section 1988;
5. For costs of suit; and
6. For such other and further relief as the Court deems just and proper.

DATED: June 19, 2007

LAW OFFICES OF FRANK A. WEISER

By: /s/ Frank A. Weiser

FRANK A. WEISER, Attorney for Plaintiffs NARANJIBHAI PATEL and RAMILABEN PATEL

DEMAND FOR JURY TRIAL

Plaintiffs hereby demand a jury trial pursuant to F.R.C.P. 38.

DATED: June 19, 2007

LAW OFFICES OF FRANK A. WEISER

By: /s/ Frank A. Weiser

FRANK A. WEISER, Attorney for Plaintiffs NARANJIBHAI PATEL and RAMILABEN PATEL

City of Los Angeles
California
[Graphic Omitted]
Antonio R. Villaraigosa
Mayor

CERTIFICATION

STATE OF CALIFORNIA

} ss.

COUNTY OF LOS ANGELES,

I, City Clerk of the City of Los Angeles and ex-officio Clerk of the City Council of the City of Los Angeles, do hereby certify and attest the foregoing to be a full, true and correct copy of the original **Section 41.49 from the Los Angeles Municipal Code**, in its entirety on file in my office, and that I have carefully compared the same with the original.

In Witness Whereof, I have hereunto set my hand and affixed the Seal of City of Los Angeles, this 19th day of June 2007.

City Clerk of the City of Los Angeles

By: /s/ Maria C. Rico

Maria C. Rico, Deputy

PROOF OF SERVICE

STATE OF CALIFORNIA)
) ss.
COUNTY OF LOS ANGELES)

I am employed in the County of Los Angeles, am over the age of 18 years, and not a party to the within action. My business address is 3460 Wilshire Boulevard, Suite 903, Los Angeles, California 90010.

On June 19, 2007, I served the document entitled SECOND AMENDED COMPLAINT FOR DAMAGES AND DECLARATORY AND INJUNCTIVE RELIEF [Violation of Federal Civil Rights] on the interested parties in this action by mailing a true copy thereof addressed as follows:

Rockard J. Delgadillo, City Attorney
Laurie Rittenberg, Assistant City Attorney
Todd T. Leung, Deputy City Attorney
Office of the City Attorney
Business and Complex Litigation Division
200 N. Main Street, 9th Floor
City Hall East
Los Angeles, CA 90012-4131

X BY FIRST CLASS U.S. MAIL: I deposited such envelope with postage thereon fully prepaid in the United States mail at Los Angeles, California.

BY PERSONAL SERVICE: I caused to be delivered such document by hand to the persons listed as addressed above.

BY FACSIMILE TRANSMISSION: I transmitted to the persons listed at the telephone number above.

X (FEDERAL) I declare that I am employed by a member of the bar of this Court, at whose direction this service was made.

Executed on June 19, 2007 at Los Angeles, California.

/s/ Frank A. Weiser

Frank A. Weiser

ROCKARD J. DELGADILLO, City Attorney
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LAURIE RITTENBERG, Assistant City Attorney
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Attorneys for Defendant
CITY OF LOS ANGELES

UNITED STATES DISTRICT COURT
CENTRAL DISTRICT OF CALIFORNIA

Case No.: CV05-01571 DSF (AJWx)
[Consolidated w/CV 03-3610 DSF (AJWx) and CV 04-2192 DSF (AJWx)]

NARANJIBHAI PATEL;
RAMILABEN PATEL,

Plaintiffs,

v.

CITY OF LOS ANGELES, a municipal corporation; CITY OF LOS ANGELES POLICE CHIEF WILLIAM BRATTON; CITY OF LOS ANGELES POLICE OFFICER LOPEZ, Badge No. 31911 No. 33002, sued as DOE 1; CITY OF LOS ANGELES POLICE OFFICER SANCHEZ, Badge No. 32705, sued as DOE 2; CITY OF LOS ANGELES POLICE OFFICER MARISCO, Badge No. 32006, sued as

DOE 3; CITY OF LOS ANGELES POLICE OFFICER GALLEGOS, Badge No. 33847, sued as DOE 4; CITY OF LOS ANGELES POLICE OFFICER KOVAL, Badge No. 32668, sued as DOE 5; CITY OF LOS ANGELES POLICE OFFICER VARGAS, Badge No. 31332, sued as DOE 6; CITY OF LOS ANGELES POLICE OFFICER DAVILA, Badge No. 31802, sued as DOE 7; and DOES 8 THROUGH 10 INCLUSIVE,

Defendants.

~~[PROPOSED]~~ FINAL PRETRIAL CONFERENCE ORDER

Trial Date: August 26, 2008
Time: 9:00 a.m.
Courtroom: 840

Following pretrial proceedings, pursuant to Rule 16, F.R.Civ. P. and Local Rule 9, IT IS ORDERED:

1. The parties are:

   a. Plaintiff Los Angeles Lodging Association;

   b. Plaintiffs Plaintiffs [*sic*] Naranjibhai Patel, Ramilaben Patel;

   c. All Named Individual Plaintiffs in the related cases CV04-2192 DSF and CV03-3610 DSF; and

   d. Defendant City of Los Angeles (hereinafter "City").

Each of these parties has been served and has appeared. All other parties named in the pleadings

and not identified in the preceding paragraph are now dismissed.

The pleadings which raise the issues are the Second Amended Complaint filed in this case.

2. Federal jurisdiction and venue are invoked upon the grounds:

a. Jurisdiction of the federal court exists pursuant to 28 U.S.C. sections 1331 and 1343(a)(3). This action, which arises under the laws of the United States, specifically 42 U.S.C. section 1983.

b. Venue is proper in this District pursuant to 28 U.S.C. section 1391(b) in that Defendant City of Los Angeles, is a public entity in this District, and the claims arose in this District.

3. Trial is estimated to take two (2) hours.

4. The trial is to be a bench trial. No jury instructions will be lodged as this is a bench trial.

5. The following facts are admitted and require no proof: Plaintiffs in this action are owners and operators of motels in the city of Los Angeles.

Without any admission of liability or waiver of defenses by the City as to any future action that might be brought by the individually named Plaintiffs for damages, Plaintiffs have been subject and continue to be subject to searches and seizures of their motel registration records by the Los Angeles Police Department (hereinafter "LAPD") without consent or warrant pursuant to Los Angeles Municipal Code (hereinafter "LAMC") section 41.49 which permits law enforcement to demand

inspection of motel registers at any time without consent or warrant.

The claims made in this action are for declaratory and injunctive relief only since LAMC 41.49 has already been applied to various Plaintiffs. The parties agree that the sole issue in the consolidated action is a facial constitutional challenge to LAMC section 41.49 under the Fourth Amendment. Plaintiffs do not seek damages in this action, and *Monell* claims are not at issue.

6. The following facts, though stipulated, shall be without prejudice to any evidentiary objection: none.

7. Plaintiffs' Claims:

a. Plaintiffs plan to pursue a claim under the Federal Civil Rights Act at 42 U.S.C. section 1983 against the City.

b. The ultimate facts required to be proved under 42 U.S.C. §1983 is whether Defendant intentionally violated LALA and the individual named plaintiffs in this action nos. CV04-2192 DSF and CV03-3510 DSF by subjecting them to unreasonable searches and seizures of their motel registration records in violation of their rights under the Fourth Amendment of the United States Constitution.

c. Plaintiffs submit the following brief statement of the evidence to be relied upon in proving these claims:

The individually named plaintiffs in this action and related case nos. CV04-2192 DSF and

CV03-3510 DSF are owners and operators of motels in the City of Los Angeles and members of the Los Angeles Lodging Association ("LALA").

LALA and the individually named plaintiffs claim that they have been subject and continue to be subject to unreasonable searches and seizures pursuant to LAMC §41.49 which permits law enforcement to demand inspection of their motel registers at any time without consent or a warrant. LALA and the individually named plaintiffs claim that LAMC §41.49 violates, on its face the Fourth Amendment, of the United States Constitution, and seek a declaratory judgment and injunction against the defendant declaring and enjoining further operation of LAMC §41.49.

Plaintiffs claim that they have a (1) reasonable expectation of privacy in the motel registers; (2) that the inspection of the motel registers does infringe upon values protected by the Fourth Amendment; and that the inspection of the motel registers are not valid administrative inspections designed to enforce LAMC §41.49 and said inspections pursuant to said section violate the standards of *New York v. Burger*, 482 U.S. 691 (1987).

8. Defendant's Claims:

a. No Reasonable Expectation of Privacy in the Motel Registers

Plaintiffs do not have a legitimate expectation of privacy in the names and addresses of its guests that are recorded in its motel registers. The register did not contain highly personal information. The

mere consultation of business records which reveal a person's name and address or telephone number by law enforcement agents does not offend any interests protected by the Fourth Amendment.

b. Inspection of Motel Registers Does Not Infringe Upon Values Protected by the Fourth Amendment

The contents of the motel registers do not rise to the level of constitutional protection. "Although a motel guest may have a reasonable expectation of privacy in his room courts have refused to find such an interest in records similar to the registration records here." *United States v. Willis*, 759 F.2d 1486 (11 Cir., 1985). "Name and address relate to identification rather than disclosure of private, personal affairs." *People v. Elder*, 63 Cal.App.3d 731, 737 (1976). Therefore, examination of motel registers by police officers did not constitute an unreasonable search and seizure.

c. Inspection of the Motel Registers Were Valid Administrative Inspections Designed to Enforce LAMC Section 41.49

(1) The Business of Motels is a "Closely Regulated" Industry

"The business of keeping a hotel is closely related to the health and welfare of the public and has long been regarded as a thing affected with a public interest." *State of Ohio v. Norval Hotel Co.*, 103 Ohio St. 351, 363 (1921). The provisions regulating the activity of motels are extensive. As such, an operator/owner of a motel has a reduced

expectation of privacy in this "closely regulated" business.

(2) There is a "Substantial" Government Interest that Furthers the Regulatory Scheme Pursuant to Which the Inspection is Made

The City has an interest in regulating the motel business because of the public health and safety issues surrounding an industry that has begun renting its rooms by the hour resulting in the facilitation of prostitution and other criminal activities. Plaintiffs share the City's concerns which are expressly conveyed to its guests through the notice printed on the motel registration card. Despite Plaintiffs' assertions in this lawsuit, Plaintiffs recognized the government's regulatory interest surrounding LAMC section 41.49 and have engaged in a practice to further the objectives of the regulatory scheme.

(3) Warrantless Inspections Are Necessary to Further the Regulatory Scheme

Regulation of the motel industry reasonably serves the City's substantial interest in regulating an industry that poses health and safety issues involving prostitution and other criminal activities. As such, warrantless administrative inspections pursuant to LAMC section 41.49 are required to further the regulatory scheme of regulating an industry that coincidently facilitates prostitution and other criminal activities.

(4) LAMC Section 41.49 Is Limited in Time, Place, and Scope

Motel registers are kept and open for reasonable inspection pursuant to LAMC section 41.49. The place and scope of the inspections are limited to the motel registers only and at the business of the motel. As such, the permissible scope of these searches is narrowly defined. LAMC section 41.49 places adequate limits upon the discretion of the inspecting officers.

9. There are no third-party Plaintiffs or Defendants in this case.

10. The only exhibit will be LAMC section 41.49.

11. No witnesses will be called by the parties.

12 Aside from LAMC section 41.49, the parties do not anticipate on introducing any additional evidence.

13. No law and motion matters (including motions in limine) are pending.

14. The parties agree that the trial should not be bifurcated as there is no claim to damages.

15. The foregoing admissions have been made by the parties, having specified the foregoing issues of fact and law remaining to be litigated, this pretrial conference order shall supersede the pleadings and govern the course of the trial of this cause, unless modified to prevent manifest injustice.

DATED: _____

The Honorable DALE S. FISCHER
United States District Judge

FRANK A. WEISER, Attorney for Plaintiffs

/s/

ROCKARD J. DELGADILLO, City Attorney
LAURIE RITTENBERG, Assistant City Attorney
TODD T. LEUNG, Deputy City Attorney
Attorneys for Defendant City of Los Angeles

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15. The foregoing admissions have been made by the parties, having specified the foregoing issues of fact and law remaining to be litigated, this pretrial conference order shall supersede the pleadings and govern the course of the trial of this cause, unless modified to prevent manifest injustice.

DATED: 9/2/08

/s/ Dale S. Fischer

The Honorable DALE S. FISCHER
United States District Judge

/s/ Frank A. Weiser

FRANK A. WEISER, Attorney for Plaintiffs

ROCKARD J. DELGADILLO,
City Attorney
LAURIE RITTENBERG,
Assistant City Attorney
TODD T. LEUNG,
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Attorneys for Defendant
CITY OF LOS ANGELES

UNITED STATES DISTRICT COURT
CENTRAL DISTRICT OF CALIFORNIA

Case No.: CV05-01571 DSF (AJWx)
[Consolidated w/ CV 03-3610 DSF (AJWx) and CV 04-2192 DSF (AJWx)]

TRIAL BRIEF

Trial Date: August 26, 2008
Time: 9:00 a.m.
Courtroom: 840

NARANJIBHAI PATEL; RAMILABEN PATEL,

Plaintiffs,

v.

CITY OF LOS ANGELES, a municipal corporation; CITY OF LOS ANGELES POLICE CHIEF WILLIAM BRATTON; CITY OF LOS ANGELES

POLICE OFFICER LOPEZ, Badge No. 31911 No. 33002, sued as DOE 1; CITY OF LOS ANGELES POLICE OFFICER SANCHEZ, Badge No. 32705, sued as DOE 2; CITY OF LOS ANGELES POLICE OFFICER MARISCO, Badge No. 32006, sued as DOE 3; CITY OF LOS ANGELES POLICE OFFICER GALLEGOS, Badge No. 33847, sued as DOE 4; CITY OF LOS ANGELES POLICE OFFICER KOVAL, Badge No. 32668, sued as DOE 5; CITY OF LOS ANGELES POLICE OFFICER VARGAS, Badge No. 31332, sued as DOE 6; CITY OF LOS ANGELES POLICE OFFICER DAVILA, Badge No. 31802, sued as DOE 7; and DOES 8 THROUGH 10 INCLUSIVE,

Defendants.

* * *

V. INSPECTIONS OF HOTEL REGISTERS ARE VALID ADMINISTRATIVE INSPECTIONS DESIGNED TO ENFORCE LAMC 41.49

In "situations of 'special need' [citations omitted], where the privacy interests of the owner are weakened and the government interests in regulating particular businesses are concomitantly heightened, a warrantless inspection of commercial premises may well be reasonable within the meaning of the Fourth Amendment." *New York v. Burger*, 482 U.S. 691, 702 (1987). Nevertheless, "warrantless inspection even in the context of a pervasively regulated business, will be deemed to be reasonable only so long as three criteria are met." *Id.* "First, there must be a 'substantial' government interest that informs the regulatory scheme pursuant to

which the inspection is made." *Id.* (citations omitted). "Second, the warrantless inspections must be 'necessary to further [the] regulatory scheme.'" Id. (citations omitted). "Finally, 'the statute's inspection program, in terms of the certainty and regularity of its application, [must] provid[e] a constitutionally adequate substitute for a warrant.'" *Id.* (citations omitted). "In other words, the regulatory statute must perform the two basic functions of a warrant: it must advise the owner of the commercial premises that the search is being made pursuant to the law and has a properly defined scope, and it must limit the discretion of the inspecting officers." *Id.* (citations omitted).

A. The Business of Hotels is a "Closely Regulated" Industry

"The business of keeping a hotel is closely related to the health and welfare of the public and has long been regarded as a thing affected with a public interest." *State of Ohio v. Norval Hotel Co.*, 103 Ohio St. 361, 363 (1921). "At common law an inn has been defined as a house which is held out to the public as a place where transient persons who come will be received and entertained as guests for compensation; as a public house for entertainment for all who choose to visit it." *Id.* (citations omitted). "License statutes have been adopted in many states, under which the keepers of hotels are required to be licensed, and regulations are prescribed concerning, the maintenance and operation of hotels in the interest of the public health and welfare." *Id.* "No principle is better established than that when an owner devotes private property to the public use he

so devotes it bound with notice that it will be subject to public regulation, both as to its use and as to the compensation to be paid for it. (*Minn v. Illinois*, 94 U.S. 113.)" *Id.* The provisions regulating the activity of hotels are extensive. As such, an operator of a hotel has a reduced expectation of privacy in this "closely regulated" business.

B. There is a "Substantial" Government Interest that Informs the Regulatory Scheme Pursuant to Which the Inspection is Made

The City has an interest in regulating the hotel business because of the public health and safety issues surrounding an industry that has begun renting its rooms by the hour resulting in the facilitation of prostitution and other criminal activities.

Plaintiffs have acknowledged some of the City's concerns and on some of the motel registration cards utilized by Plaintiffs,[5] it has the following notice printed on the registration card which provides in pertinent part:

> " I the undersigned, give my full consent and acknowledge my desire to provide myself in the privacy of my own room, which I have rented. I also agree that I will not permit any person under 18 years of age to occupy and any person be a guest in my room at any time. I fully understand that the management of this motel does not allow prostitution in the motel nor do they permit any prostitute to

[5] Attached hereto as Exhibit 3 are true and correct copies of Plaintiffs' motel registration card.

> occupy any room in this premises. I declare that I am not a prostitute and I agree with the management in excluding prostitution. I have read the above fully before signing it."

Boulevard Motel's registration cards contain similar language as follows:

> "ABSOLUTELY NO PROSTITUTION, NO DRUGS. "

Plaintiffs share the City's concerns which are expressly conveyed to its guests through the notice printed on the motel registration card. Despite Plaintiffs' assertions in this lawsuit, Plaintiffs recognized the government's regulatory interest surrounding LAMC 41.49 and have engaged in a practice to further the objectives of the regulatory scheme.

The California Supreme Court recognized that "[u]nder the Penal Code of this state, keeping or knowingly letting any tenement for the purposes of prostitution, keeping a house of ill-fame resorted to for the purposes of prostitution or lewdness, or residing therein, are criminal offenses, and every person who lives in or about such houses, and any common prostitute, is a vagrant. (Pen. Code, Secs. 315, 316, 647)." *Pon v. Wittman*, 147 Cal. 280, 292 (1905). "These laws have for their object the prostitution and suppression of prostitution .Their maintenance directly tends to corrupt and debase public morals, to promote vice, and to encourage dissolute and habits, and the suppression of nuisances of this character, and having this tendency, is one of the important duties of government." *Id.* "The suppression of such houses, as

evidenced by the stringent laws concerning them, is the public policy of the state, and their abatement is to be accomplished by any reasonable and effective means which does not involve a breach of the peace or the invasion of private rights." *Id.* at 292-293.

By requiring hotel operators to keep a hotel register that includes a guest's name, address, and motor vehicle information, if applicable, such requirement deters prostitution and/or other criminal activities. (See Declaration of Eric Moore attached to the City's Trial Brief filed 10/12/06, docket number 37.) Prostitutes and/or other criminals have been reluctant to provide their true identity and/or provide false identifying information. (See Declaration of Eric Moore attached to the City's Trial Brief filed 10/12/06, docket number 37.) As such, due to the nature of the motel industry, the public health and safety concerns are understandable and the City's actions support its regulatory objectives.

C. Warrantless Inspections Are Necessary to Further the Regulatory Scheme

Regulation of the hotel industry reasonably serves the City's substantial interest in regulating an industry that poses health and safety issues involving prostitution and other criminal activities. "'If inspection is to be effective and serve as a credible deterrent, unannounced, even frequent, inspections are essential... the prerequisite of a warrant could easily frustrate inspection; and if the necessary flexibility as to time, scope, and frequency is to be preserved, the protections afforded by a

warrant would be negligible.' *Berger*, supra, 482 U.S. at 710.

As discussed above, by requiring that hotel operators record the name(s), address(es), and vehicle information of its guests, amended LAMC 41.49 furthers the City's regulatory scheme to deter prostitution and other criminal activities at such hotels. Therefore, warrantless administrative inspections pursuant to LAMC 41.49 are required to regulate an industry that coincidently facilitates prostitution and other criminal activities.

D. Amended LAMC 41.49 Advises Hotel Operators that an Inspection of Hotel Registers is Made Pursuant to Law and has a Properly Defined Scope, and Limits the Discretion of the Inspecting Officers

"To perform this first function, the statute must be 'sufficiently comprehensive and defined that the owner of commercial property cannot help but be aware that his property will be subject to periodic inspections undertaken for specific purposes.' *Donovan v. Dewey*, 452 U.S. at 600." *Burger*, supra, 482 U.S. at 704. "In addition, in defining how a statute limits the discretion of the inspectors, we have observed that it must be 'carefully limited in time, place, and scope.' *United States v. Biswell*, 406 U.S. at 315." *Id.* "[I]n some situations, inspections must be conducted frequently to achieve the purposes of the statutory scheme." *Id.* at 711, fn.21 (citations omitted).

In *Burger, supra*, N.Y. Veh. & Traf. Law 415-a5 permitted police officers to inspect registration

records of motor vehicles, trailers, and major component parts thereof. The United States Supreme Court found that "[s]earches made pursuant to 415-a5 clearly fall within this established exception to the warrant requirement for administrative inspections in 'closely regulated' businesses." *Burger*, supra, 482 U.S. at 703. The Court explained that while "limitations, or the absence thereof, are a factor in an analysis of the adequacy of a particular statute, they are not determinative of the result so long as the statute, as a whole, places adequate limits upon the discretion of the inspecting officers." Id. at 711, fn.21. Similarly, in *United States v. Biswell*, 406 U.S. 311, 311-312 (1972), the United States Supreme Court approved a statute that "authorizes official entry during business hours into 'the premises (including places of storage) of any firearms or ammunition dealer for the purpose of inspecting or examining (1) any records or documents required to be kept and (2) any firearms or ammunition kept or stored by such dealer at such premises.'"

In *People v. Potter*, 128 Cal.App.4th 611 (2005), Vehicle Code section 2805 limited inspections of premises that provide auto related services to the public, whenever possible, to be "'conducted at a time and in a manner so as to minimize any interference with, or delay of, business operations.' (2805, subd. (c).)" The Court recognized "that the section does not allow indiscriminate, broad searches of business premises but rather only permits searches that are 'conducted under reasonable circumstances and limited in nature,' [and] courts have repeatedly

concluded that section 2805 passes constitutional muster." *Id.* at 620.

Analogous to the cases discussed above, the amended LAMC 41.49 is limited in time, place, and scope of the inspection. The scope of the inspections is limited to the hotel registers only. The place for such inspections is limited to the hotel premises in the guest reception or guest check-in area or in an office adjacent to that area. As such, the permissible scope of these searches is narrowly defined. The amended LAMC 41.49 places adequate limits upon the discretion of the inspecting officers. Therefore, amended LAMC 41.49 is constitutional.

E. Governmental Agencies Can Address a Major Social Problem Both by Way of an Administrative Scheme and Through Penal Sanctions

"Administrative statutes and penal laws may have the same ultimate purpose of remedying the social problem, but they have different subsidiary purposes and prescribe different methods of addressing the problem." *Burger*, supra, 482 U.S. at 712. "An administrative statute establishes how a particular business in a 'closely regulated' industry should be operated, setting forth rules to guide an operator's conduct of the business and allowing government officials to ensure that those rules are followed." Id. at 712-713.

In the instant case, the regulatory purpose of amended LAMC 41.49 are served by having inspecting officers review the hotel registration cards, and if possible, compare the information

detailed on the registration card(s) to any observations made by the officer of guest(s) that checked in. To forbid inspecting officers the opportunity to review the hotel registration cards and/or make such comparison, it would permit a hotel operator to thwart the purposes of the administrative scheme and continue to foster prostitution and/or other criminal activities.

...

F. No Constitutional Significance Where Police Officers, Rather than Administrative Agents, Conduct LAMC 41.49 Inspections

"As a practical matter, many States do not have the resources to assign the enforcement of a particular administrative scheme to a specialized agency." *Burger*, supra, 482 U.S. at 717. "So long as a regulatory scheme is properly administrative, it is not rendered illegal by the fact that the inspecting officer has the power to arrest individuals for violations other than those created by the scheme itself." *Id.* The Supreme Court "declined to impose upon the States the burden of requiring the enforcement of their regulatory statutes to be carried out by specialized agents." *Id.* Likewise, in the instant action, the fact that the amended LAMC 41.49 is carried out by LAPD officers is of no constitutional significance.

VI. CONCLUSION

WHEREFORE, it is respectfully submitted that Plaintiffs will not be able to establish a facial constitutional challenge to LAMC 41.49, and the

City is entitled to a judgment and dismissal of the entire action against Plaintiffs.

Dated: August 5, 2008

ROCKARD J. DELGADILLO, City Attorney
LAURIE RITTENBERG, Assistant City Attorney
TODD T. LEUNG, Deputy City Attorney

By /s/ Todd Leung
TODD T. LEUNG, Deputy City Attorney

Attorneys for Defendant
CITY OF LOS ANGELES

IN	REGISTRATION	OUT
4:25		7:25
KEY	**NO REFUNDS**	

NOTICE TO GUESTS
ADVANCE PAYMENT REQUESTED

This property is privately owned and the management reserves the right to refuse service to anyone, and will not be responsible for accidents or injury to guests or for loss of money, jewelry or valuables of any kind. Also, I the undersigned, give my full consent and acknowledge my desire to provide myself in the privacy of my own room, which I have rented. I also agree that I will not permit any person under 18 years of age to occupy and any persons to be a guest in my room at any time. I fully understand that the management of this motel does not allow prostitution in the motel nor do they permit any prostitute to occupy any room in this premises. I declare that I am not a prostitute and I agree with the management in excluding prostitution. I have read the above fully before signing it.

NAME [REDACTED]			
STREET [REDACTED]			
CITY LA		**STATE** CA	90016
VALID I.D. [REDACTED]			
CAR LICENSE [REDACTED]		**STATE** CA	
MAKE OF CAR Dodge		**NUMBER OF PERSONS** 2	

ROOM NO. 5	
DATE IN 12, 10, 03	
RATE $ 25	
DATE OUT 12, 10, 03	
DAYS OCCUPIED	
SUN	
MON	
TUE	
WED	
THU	
FRI	
SAT	
TOTAL DAYS	**RATE $** _____ **TAX** _____ **TOTAL**

IN 3:40 KEY

REGISTRATION

OUT 4:40

NO REFUNDS

NOTICE TO GUESTS
ADVANCE PAYMENT REQUESTED

This property is privately owned and the management reserves the right to refuse service to anyone, and will not be responsible for accidents or injury to guests or for loss of money, jewelry or valuables of any kind. Also, I the undersigned, give my full consent and acknowledge my desire to provide myself in the privacy of my own room, which I have rented. I also agree that I will not permit any person under 18 years of age to occupy and any persons to be a guest in my room at any time. I fully understand that the management of this motel does not allow prostitution in the motel nor do they permit any prostitute to occupy any room in this premises. I declare that I am not a prostitute and I agree with the management in excluding prostitution. I have read the above fully before signing it.

NAME [REDACTED]	
STREET [REDACTED]	
CITY [ILLEGIBLE]	**STATE** CA
VALID I.D. [REDACTED]	
CAR LICENSE [REDACTED]	**STATE** CA
MAKE OF CAR Ford Van	**NUMBER OF PERSONS** 2

ROOM NO. 12	
DATE IN 12, 10, 03	
RATE $ 15	
DATE OUT 12, 10, 03	
DAYS OCCUPIED	
SUN	
MON	
TUE	
WED	
THU	
FRI	
SAT	
TOTAL DAYS	**RATE $** _____ **TAX** _____ **TOTAL**

BOULEVARD MOTEL

6919 SO. FIGUEROA BLVD., LOS ANGELES, CALIFORNIA, 90003, USA

Phone: (323) 759 - 9302; Fax: (323) 759 9302

Guest Name	[REDACTED]
Address	[REDACTED] LOS ANGELES, CA
ID Type	Driver License
ID #	
ID State	CA
ID Country	United States
Vehicle Make	NO CAR
Model & Year	
License Plate	NO CAR
License State	CA
Folio #	**011105103505**
Room	9
# Of Guest	1
Check In Date	11/01/2005
Check In Time	10:35:05
Check Out Date	11/02/2005
Check Out Time	00:00:00

Particulars			Total
Rental Charges			
Rent:		52.64	
Transient Tax:			
Local Tax:	7.37		
State Tax:	0.00	7.37	60.01
Add: Other Charges			0.00
Total Charges			**60.01**
Less: Amount Paid			(60.00)
			0.01

Thank you for your stay with us. Please visit us again.

NOTICE TO GUESTS: This property is privately owned and the management reserves the right to refuse service to anyone. Management will not be responsible for accidents or injury to guests or for loss of money, jewelry or valuables of any kind. Management will not be responsible for any item left in the room.

CHECKOUT TIME: 11:00 AM
SELF REGISTRATION ONLY

I AGREE that my liability for this bill is not waived and agree to be held personally liable in the event

that the indicated person or company failed to pay for any part or full amount of these charges including any missing/damaged items, etc. I agreee [*sic*] that if an attorney is retained to collect these charges, I will pay all reasonable attorney's fees and costs incurred. If payment is by credit card you are authorized to charge my account for all these charges incurred, including any and all damages/missing items, etc. I agree that the sole purpose of renting this room is for my ownd [*sic*] residency only.

L.A.M.C.41.49.

ABSOLUTELY NO PROSTITUTION, NO DRUGS, NO VISITORS AFTER 10:00 PM. VISITORS MUST CHECK IN AT FRONT DESK WITH AN ID.VALID ID REQUIRED FOR EACH GUEST.NO HOURLY RATES.

Customer Signature [REDACTED]
Date: 11-1-05

CheckedIn By: **MIKE BHAKTA**
Checkedout By:

UNITED STATES DISTRICT COURT
CENTRAL DISTRICT OF CALIFORNIA

CIVIL MINUTES – TRIAL

Case No. CV 05-1571 DSF (AJWx);
Member Case CV 04-2192 DSF (AJWx);
Related Case CV 03-3610 DSF (AJWx)
Date 8/28/08
Title: Naranjibhai Patel v. City of Los Angeles

Present: The Honorable DALE S. FISCHER, UNITED STATES DISTRICT JUDGE

Debra Plato
Deputy Clerk

Pamela Seijas
Court Reporter/Recorder, Tape No.

Attorneys Present for Plaintiff(s):
Frank Weiser

Attorneys Present for Defendants:
Todd Leung

1st Day Court Trial
___ Day Jury Trial

X One day trial:
__ Begun (1st day);
__ Held & Continued;

___ Completed by jury verdict/submitted to court.

___ The Jury is impaneled and sworn.

___ Opening Statements made by _____

___ Witnesses called, sworn and testified.
___ Exhibits Identified
___ Exhibits admitted.

X Plaintiff(s) rest.
X Defendant(s) rest.

___ Closing arguments made by
___ plaintiff(s)
___ defendant(s).
___ Court instructs jury.

___ Bailiff(s) sworn.
___ Jury retires to deliberate.
___ Jury resumes deliberations.

___ Jury Verdict in favor of
___ plaintiff(s)
___ defendant(s)
is read and filed.

___ Jury polled.
___ Polling waived.

___ Filed Witness & Exhibit Lists
___ Filed jury notes.
___ Filed jury instructions.

___ Judgment by Court for _____
- ___ plaintiff(s)
- ___ defendant(s).

___ Findings, Conclusions of Law & Judgment to be prepared by
- ___ plaintiff(s)
- ___ defendant(s).

_X_ Case submitted.
___ Briefs to be filed by _____

___ Motion to dismiss by _____ is
- ___ granted.
- ___ denied.
- ___ submitted.

___ Motion for mistrial by _____ is
- ___ granted.
- ___ denied.
- ___ submitted.

___ Motion for Judgment/Directed Verdict by is
- ___ granted.
- ___ denied.
- ___ submitted.

___ Settlement reached and placed on the record.

___ Clerk reviewed admitted exhibits with counsel to be submitted to the Jury/Court for deliberation/findings.

___ Counsel stipulate to the return of exhibits upon the conclusion of trial. Exhibit Release Form prepared and filed.

___ Trial subpoenaed documents returned to subpoenaing party.

___ Case continued to _____ for further trial/further jury deliberation.

_X_ Other: Parties submit on trial briefs

2 : 00

Initials of Deputy Clerk dp

UNITED STATES DISTRICT COURT
CENTRAL DISTRICT OF CALIFORNIA

THE HONORABLE DALE S. FISCHER
UNITED STATES DISTRICT JUDGE PRESIDING

Naranjibhai Patel, et al.,

Plaintiffs,

vs.

City of Los Angeles, et al.,

Defendants.

Case No.

CV 05-1571-DSF (AJW)

REPORTER'S TRANSCRIPT OF PROCEEDINGS

Los Angeles, California

Thursday, August 28, 2008

Pamela A. Seijas, CSR, FCRR, RMR
Official Reporter
Roybal Federal Building
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Room 181-I
Los Angeles, California 90012
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APPEARANCES:

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FOR DEFENDANT:

TODD T. LEUNG
OFFICE OF THE CITY ATTORNEY
CITY HALL EAST-LITIGATION DIVISION
200 NORTH MAIN ST, ROOM 900
LOS ANGELES, CA 90012-4131

Los Angeles, California, Thursday, August 28, 2008

10:24 a.m.

-oOo-

THE CLERK: Calling Case CV 05-1571-DSF, *Naranjibhai Patel, et al., vs. City of Los Angeles, et al.*

MR. WEISER: Good morning, Your Honor. Frank Weiser on behalf of the plaintiffs.

MR. LEUNG: Good morning, Your Honor. Todd Leung, Deputy City Attorney, on behalf of the City of L.A.

THE COURT: Good morning to both of you.

Mr. Weiser, would you like to start?

MR. WEISER: Sure, thank you, Your Honor. I do want to make a remark. I apologize to the court clerk. I did not understand. I read the message that we just show up here Thursday morning, so I do apologize.

Before I start, Your Honor, I have the certified copies and I think I referred to it in the trial brief of 4149 and Section 11, if I might hand that to the clerk.

THE COURT: Sure.

MR. WEISER: If we could mark those as exhibits, your Honor.

THE COURT: Okay. Mr. Leung, I assume you are fully aware of these documents and what they say?

MR. LEUNG: Yes.

THE COURT: Okay. Thank you. Shall we have 4149 as Exhibit 1 and 11.00 as Exhibit 2?

MR. WEISER: Yes, Your Honor.

THE COURT: All right. Thank you.

(Plaintiffs' Exhibits 1 and 2 were marked.)

THE COURT: You may proceed.

MR. WEISER: I'm just going to add briefly to what I indicated in the brief, Your Honor.

I think there are two issues here that Mr. Leung has raised in his trial brief. One was an issue as far as procedural issues as far as a potential bar to the case. And the other is going to the substantive issues of the ordinance itself, the constitutionality of the ordinance itself under the Fourth Amendment.

I don't see a bar under *Salerno*, the *U.S. vs. Salerno* case which is the old facts and circumstances case. And the reason being although that is a difficult challenge to overcome generally, the case that was cited in our trial brief, which is the *Tucson Women's Clinic vs. Eden* case, was a Fourth Amendment challenge also under the *U.S. vs. Berger* challenge -- standard in which the Ninth Circuit clearly analyzed that ordinance.

It was also an issue of inspection of records dealing with an abortion clinic and analyzing it under *Salerno*. They analyzed the whole case. It was a facial challenge. They analyzed all the challenges under the *Salerno* test, except for what they said was the undue burden challenge.

The *Berger* issue was analyzed under *Salerno* and the ordinance was invalidated. And the reason being that -- and I've had a little bit of experience in some other cases, but these kind of cases under *Berger*, you're not looking at individualized suspicion. You're looking at the administrative scheme and whether it meets the Berger standard, and if it doesn't or if it does, that's really the issue. So it becomes more of a legal issue than looking at what you would normally look in Fourth Amendment-type cases.

So I think we clearly can get to the issue under the ordinance. Also the issue of what we're asking for here. We decided not to ask for damages. We decided to just go to the issue of the constitutionality ordinance.

As far as declaratory and injunctive relief, which is also a higher standard or burden to meet in terms of future harm, in the trial brief what we cited is the fact that our order that we've submitted to the Court, the Pretrial Conference order, the stipulated facts, are that the motel operators are not only now subject to the ordinance, they have been subject, and are presently being subject to the ordinance and are being subject to it for inspections without consent or a warrant.

So I believe what we have is an ongoing pattern up to this point now which gives the sufficient harm or the injury in fact for purposes of any future declaratory relief that the Court might award, if the Court finds that the ordinance is unconstitutional.

Going to the constitutionality of the ordinance under the *Berger* standard, if *Berger* is found to be applicable in the sense that the *Berger* factors are met, then there certainly is a less than reasonable expectation of privacy. That really is what *Berger* is talking about, the fact that if you have a closely-regulated business, there is a substantial governmental interest that is at play in that the ordinance ties to that substantial governmental interest, and there's some judicial substitute for a warrant requirement under the ordinance, then the owners do have a less than reasonable expectation of privacy. But that doesn't mean that they have no reasonable expectation of privacy.

The point of *Berger* is that even with the less than reasonable expectation of privacy, there still has to be a judicial substitute of a warrant that limits the discretion of government in terms of the inspections.

And we look at the four *Berger* factors. The first factor, of course, is whether in fact this is a closely-regulated business, whether the motel industry is a closely-regulated business. And I saw no evidence that's been presented that shows a pervasive regulatory scheme with a -- of sufficient duration that would indicate that this is the type of a business that is closely regulated.

I will admit that the ordinance had a predecessor ordinance going back to the '60s. I think there were model ordinances like this in other cities. We don't have evidence of that, but I think, you know, the City had this ordinance on the books since the 1960s and that might be some factor.

THE COURT: And is the regulation -- where am I looking? Am I looking in the City of L.A., in the County, in Southern California, in California? At what level?

MR. WEISER: You know, that really hasn't -- there is no -- I couldn't find an answer for that myself. It seemed I cited a case -- I think it was in the *Tucson Women's* case, *Women's Clinic* case, excuse me, and then that was -- that cited *United States vs. Argent* case where they seem to say that one case they were looking at the ordinance itself. They couldn't find anything outside of it. And so they looked at the ordinance itself and looked at the duration of the ordinance and didn't put too much weight on it.

But some of the other cases, I think *Berger, Colonade* and some of the other cases I've cited talk about the industry, you know, as a whole. But I don't think there's a definite clear answer on that.

But I'm willing to concede that -- not concede for purposes of -- but for argument, in arguendo, that we are talking about closely-regulated business.

But then going to the next factor, the substantial governmental interest, there's nothing in the ordinance, oddly enough, in the amended ordinance, that has any preamble about what the governmental purpose is.

Now, from a reality standpoint I think we all agree that what they're trying to do is curb prostitution and potentially drugs, but there's nothing there -- what we do know is now the ordinance may be being made -- the police now have

used it for other purposes. They're apparently starting to inspect some of the motels and go in there and arrest people in the rooms for, you know, warrant issues or things of that sort.

But we don't have that, at least on the record.

THE COURT: And you mean coincidentally they're looking at -- and they recognize a name?

MR. WEISER: Yeah. If they have a name or they look up the name and they see something where there's an outstanding warrant, they're going into the rooms and arresting people.

So I'm troubled, at least on that, that the ordinance -- and I think the purposes of the substantial governmental interest is once again tied to the discretion issue, that the government not have such a wide open field of discretion that nothing limits their ability and how they operate under the ordinance.

Clearly if it is and even assuming once again in arguendo it is that for prostitution and drugs, clearly the ordinance would have some tie to that in terms of being able to inspect.

But then when you get to the fourth factor, and I think this is what we had talked about in our last trial, the real issue then comes down to the judicial substitute for a warrant, as far as the time, place and scope.

The previous ordinance talked about the police being able to go in upon demand. This ordinance now says *it shall be made available to the police for inspection.* Nothing about a warrant.

As we stated in the order, they have been doing it and implementing it pursuant to the policy of the ordinance without consent or warrant. So clearly that's the interpretation of the ordinance.

And I'm just concerned, once again, that without a time limitation, the ordinance just doesn't have sufficient limitations as far as the police discretion.

In California, although that certainly is not a legal reason for the Court necessarily to go forward to invalidate -- but in California, as an example, there is code sections, even under civil inspections, administrative ones, 1822.50 of the Code of Civil Procedure which talks about warrants that are issued and normally between eight and five or there's some time period, eight and six, if you -- as we know in criminal law, it's -- if you want to get a night warrant, you have to go to a judge and get a special order for that.

THE COURT: You have to check a box, but --

MR. WEISER: Right. Maybe it's perfunctory, but still --

THE COURT: I'm sure the judge's analysis is not perfunctory but the way you apply for it is.

MR. WEISER: Yeah. Maybe that's just -- unfortunately my perception.

But the point of *Berger* is that nevertheless, the standards have to be met, and I don't see the limitation in the ordinance and certainly the implementation that meets that final standard.

That being said, Mr. Leung has raised the issue that in general -- I think, if I'm not mischaracterizing his argument, he has raised the issue that in general, the -- there is no reasonable expectation of privacy to these records. I think that is a separate or distinct argument than *Berger*.

And the basis of that, I think, is the *U.S. vs. Cormier* case which came out in the Circuit and cited some Eighth Circuit case back in the '70s which motel registration records of these sort were not found to have any expectation of privacy under the Fourth Amendment for the motel guests. And I agree. I mean, that's the law. Whether that's proper or not, but that's the law.

But the point of *Cormier* is those are third-party claims. Those are not the claims of the party who actually has possession or ownership of the records. And *Cormier* was very clear, very, very clear that based on the *U.S. vs. Miller* case which is a bank record case, where third-party bank records were given over to the government and there was no reasonable expectation of privacy for the third party to object. That it turned on the issue of ownership and possession.

And I just would like to quote again, Your Honor, *Cormier*. *Cormier* states -- and it's at page 13, line 7 through 10 of my brief. As *Cormier* stated: *The key factor, key factor, Miller held is that a person does not possess a reasonable expectation of privacy in an item of which he has no possessory or ownership interest.*

So clearly the motel guest, when he comes, he registers, gives that information, doesn't have possession or ownership of the record, can't claim that he has an expectation of privacy.

But --

THE COURT: We'll assume for these purposes that's correct, although it seems kind of odd in other contexts.

MR. WEISER: It does.

THE COURT: To have organizational privacy rights and you don't have possession of the organization's records, but I guess that's not an issue for us to decide today.

MR. WEISER: Yeah.

But as far as the application to this case where the owner, the motel owner or operator keeps those records, has those records, uses those records for reasons or can use those records for reasons other than even just providing them to the police. They can be used for inspections of tax records --

THE COURT: Well, we talked about that, I think, the last time, and I wondered if it makes a difference that they have a choice of whether to use this particular set of records that the police want to look at and keep other records with perhaps different additional information for tax purposes or whether, by deciding to keep one set of records, that they've basically waived that concern.

MR. WEISER: But the reality is -- and I've seen this in so many motel cases, you have your

motel registration cards. These are where the records are kept, on the cards.

I just had a TOT audit with the City recently where you bring those cards as your supporting evidence for your returns.

Or if somebody comes and sues the motel owner, it's what the person puts on the record there that they may use, so --

THE COURT: Well --

MR. WEISER: Granted that it may be -- it might be a different recordkeeping --

THE COURT: I don't know what you're talking about, TOT audit. But if those records can be demanded to be brought in for some kind of audit, do you have a reasonable expectation of privacy in them?

MR. WEISER: For purposes of the audit, once again, my position is that the reasonable expectation of privacy ties under *Comier* to possession ownership. And the reason I say that is that independent of that, the *Soldal* case that I cited, *Soldal vs.* Cook County case, where the U.S. Supreme Court in 1994 found that the seizure clause of the Fourth Amendment protects civil inspections and seizures, turns solely on ownership. Not even on reasonable expectation of privacy.

But interestingly *Cormier* tied the reasonable expectation of privacy issue to ownership and possession. So it seems to me there is an independent prong there for the Court to find that even if there is either a lessened expectation of

privacy or no expectation of privacy, one who has possession or ownership of property is protected to some extent under the Fourth Amendment. And *Berger* would still be applicable and you would still have to meet those standards.

THE COURT: Okay.

MR. WEISER: And then finally, Your Honor, the special needs factor, which is the -- I touched upon, which are the two U.S. Supreme Court case, *Indianapolis vs. Edmonds*, and I forget the other case, but that's really the only context I could find where the U.S. Supreme Court has found that when you have special needs of government that are divorced from law enforcement purposes, then the warrant requirement is either relaxed or not applicable, but that is clearly not here.

What we have is on the face of the ordinance, that it's the police who have the right to inspect and demand the records. So clearly it's tied and that's where Section 11 comes in, that they can cite the motel operator for violation as a misdemeanor under the ordinance.

And that might tie to the TOT issue that the Court just asked. That perhaps in a TOT issue where a finance officer asks for a record, there may be a lessened expectation of privacy for that reason but not when the police come and ask for it.

THE COURT: Okay.

MR. WEISER: With that I would rest, Your Honor.

THE COURT: Thank you.

Mr. Leung.

MR. LEUNG: Thank you, Your Honor.

With respect to the audit, the City -- the City's trial brief addresses that on page 7. There is a separate ordinance that allows the Department of Finance to go in and inspect these financial records --

THE COURT: Is that relevant, in your view?

MR. LEUNG: It is in the sense that if the Court is going to issue any type of injunction, it doesn't offer any type of relief to these plaintiffs because the City can nevertheless go in and ask for these records.

THE COURT: But not any time of the day or night presumably.

MR. LEUNG: It is at any time. That's what the ordinance indicates.

THE COURT: The ordinance concerning this TOT audit? Well, let me just say that knowing government agencies as I do, the likelihood that someone is going to call an audit at 2:00 a.m. and work overtime to do that is slim and none.

So maybe even if not by ordinance, certainly in effect that's -- it's going to be business hours when this is occurring.

MR. LEUNG: I would not disagree with the Court on that.

THE COURT: Okay. It may not matter, but I just wanted to make sure we're on the same page.

MR. LEUNG: Right.

With respect to the arguments that plaintiffs' attorney has asserted here, most of it I believe is addressed in the City's trial brief.

However, there's two points that I would like to touch on, and the first of all is the citation to *Tucson Women's Clinic vs. Eden*, and that's addressed in plaintiffs' trial brief at page 5.

Lines 14 through 16 indicates that the *regulation requires that the licensee give DHL official access to the entire abortion clinic.*

I think that's distinguishable from our -- the instant case because we're not asking for the entire motel or the business office. All that the ordinance requires is an inspection of the registration cards. And there is a proper limit to the time, place, and scope.

Considering that the motels operate on a 24/7 basis, going there and inquiring during their normal business hours, which is 24/7, is reasonable. And to impose some type of 9:00 to 5:00 situation where an officer cannot perhaps, let's say, 6:00 at night -- cannot inspect these but he's seen some activity going on, he has to come back at 9:00 and perhaps there's a shift change. The person says -- the new person in charge says, *Well, I don't know what you're talking about what happened at 6:00. I don't have anything.* You know, the hands of the officer is bound at that point in time.

As to the place, the ordinance specifically indicates where the inspection is to take place:

At the guest check-in area, guess reception area, or an office adjacent.

THE COURT: At whose choice? Does it indicate, in your view? Can the officer say, *Look, I want to go in the office* and have the motel owner say, *No, I'll bring it out to the guest reception desk*? Or doesn't it matter?

MR. LEUNG: I don't think it matters, as long as it takes place in any one of those areas. So I think it sort of -- there was an argument in the last trial of that, you know, they have to go to the residences, but that's just the way they set up their business.

But the ordinance is specific that it's either at the guest reception or guest check-in area or an office adjacent to that area.

And the scope, it's just the registration cards that's being inspected. Nothing else.

And with that, the City will submit on its trial brief.

THE COURT: All right.

Anything further, Mr. Weiser?

MR. WEISER: Very, very briefly, Your Honor.

As far as the -- I've heard this argument, obviously, before, the argument about motels being open 24/7. I mean, that's just not necessarily the case all the time for all the motels. And certainly somebody where a police officer could come and say under the ordinance, *I have the right to come here,*

irregardless, and inspect now starting at 4:00 in the morning, whether they have -- because, once again, the point of the ordinance is that under *Berger*, you don't have to have probable cause. The issue is not individualized suspicion, but simply that the administrative screen allows that, and without the discretion and limitations built into the ordinance, it lends itself to abuse or potential abuse.

THE COURT: So is your -- would a more reasonable ordinance, in your view, or, I should say, more constitutional ordinance, in your view, be one that says *subject to inspection at any time when the motel is available to receive customers or guests?*

I mean, there's a lot of those that look like they're closed, but you hit the buzzer and they come out and if you want to rent a room they're happy to rent you one.

MR. WEISER: I think the way I -- it's a difficult question. I think the way I read *Berger* is that what are the normal standard business practices in the industry. What one would indicate is what the person would expect when the police would come and inspect it. Cards of these sort.

I don't think somebody would expect the police to come just saying that *I'm going to be making a routine inspection of cards at 4:00 in the morning*, regardless of whether a customer could potentially come there at 4:00 in the morning.

You would think that the police would come at some hours -- maybe not 8:00 -- I'm not saying 8:00 to 6:00 but maybe 8:00 to 10:00, 8:00 to 12:00. But something that doesn't necessarily lend itself to the

police saying, *I can do it whenever I want, any time I want.*

And that there has to still be some limitation to there. How that's built in --

THE COURT: Not your job.

MR. WEISER: I'm not a legislator. And I haven't really given that much thought in terms of that.

But the ordinance doesn't do that. And as far as location, it says *the records shall be maintained at the location of the premises, shall be made available to any officer.* I didn't see anything that set the guidelines where at the location.

And I know Mr. Leung has talked about the fact that some of these motels, the motel operators -- the Indian motel operators live in there with their families and so there is a place where they keep the records up front. Somebody comes, a police officer comes, there is a glass window, I guess, separating them.

But where the records are is very close to their kitchen, their bedroom, and so forth.

THE COURT: Well, but, I mean, would I find an ordinance unconstitutional on its face because some of the businesses subject to the ordinance may be organized in such a way that causes a problem? That's not a facial challenge, is it?

MR. WEISER: No. I am not saying that. What I am saying is that under *Berger*, there has to be guidelines in the ordinance under time, place, and

scope. That's what I'm saying. I'm not saying because some are. But there still has to be some guidelines.

And, once again, I think the big issue of *Berger* is discretion. Does the ordinance limit sufficiently, constitutionally limit the discretion of the officers who meet the standard or doesn't it? That's the issue.

THE COURT: Okay.

MR. WEISER: Thank you.

THE COURT: All right. Well, I have been in trial constantly since the beginning of March and I'm trying to keep up with the rest of my civil caseload at the same time. So all I can promise you is that we will do our best to get to this as soon as I can, but I can't give you an estimate of when that will be.

MR. WEISER: That's fine.

THE COURT: Thank you.

MR. LEUNG: Thank you, Your Honor.

(Proceedings adjourned at 10:48 A.M.)

CERTIFICATE OF OFFICIAL REPORTER

COUNTY OF LOS ANGELES)
)
STATE OF CALIFORNIA)

I, Pamela A Batalo, Federal Official Realtime Court Reporter, in and for the United States District Court for the Central District of California, do hereby certify that pursuant to Section 753, Title 18, United States Code, that the foregoing is a true and correct transcript of the stenographically reported proceedings held in the above-entitled matter and that the transcript page format is in conformance with the regulations of the Judicial Conference of the United States.

Date: November 1, 2014

/s/ Pamela A. Batalo
Pamela A. Batalo, CSR No. 3593, FCRR, RMR
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ASSOCIATION and
All Other Individually
Named Plaintiffs

UNITED STATES DISTRICT COURT
CENTRAL DISTRICT OF CALIFORNIA

No. CV 05-1571 DSF (JWJx)
[r/t CV04-2192 DSF & CV03-3610 DSF]

NARANJIBHAI PATEL, RAMILABEN PATEL,

Plaintiffs,

vs.

CITY OF LOS ANGELES, et al.,

Defendants.

AND ALL OTHER RELATED CASES

NOTICE OF APPEAL

Plaintiffs NARANJIBHAI PATEL, RAMILABEN PATEL, LOS ANGELES LODGING ASSOCIATION and All Other Individually Named Plaintiffs in this action and related case nos. CV 04-2192 DSF and CV 03-3510 DSF hereby appeals to

the United States Court of Appeal for the Ninth Circuit the Judgment entered on September 17, 2008 (entered as Civil Docket Number 62) in favor of the Defendants City of Los Angeles and Police Chief William Bratton, and Police Officers Lopez, Sanchez, Marisco, Gallegos, Koval, Vargas and Davila.

DATED: September 17, 2006

LAW OFFICES OF FRANK A. WEISER

By: /s/ Frank A. Weiser

FRANK A. WEISER,
Attorney for Plaintiffs NARANJIBHAI PATEL, RAMILABEN PATEL, LOS ANGELES LODGING ASSOCIATION and All Other Individually Named Plaintiffs

PROOF OF SERVICE

STATE OF CALIFORNIA)
) ss.
COUNTY OF LOS ANGELES)

I am employed in the County of Los Angeles, am over the age of 18 years, and not a party to the within action. My business address is 3460 Wilshire Boulevard, Suite 1212, Los Angeles, California 90010.

On September 17, 2008, I served the document entitled NOTICE OF APPEAL on the interested parties in this action by mailing and telefaxing a true copy thereof addressed as follows:

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Todd T. Leung, Deputy City Attorney
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X BY FIRST CLASS U.S. MAIL: I deposited such envelope with postage thereon fully prepaid in the United States mail at Los Angeles, California.

BY PERSONAL SERVICE: I caused to be delivered such document by hand to the persons listed as addressed above.

X BY FACSIMILE TRANSMISSION: I transmitted to the persons listed at the telephone number above.

X (FEDERAL) I declare that I am employed by a member of the bar of this Court; at whose direction this service was made.

Executed on September 17, 2008 at Los Angeles, California.

/s/ Frank A. Weiser

Frank A. Weiser

JA 249

No. 08-56567

IN THE UNITED STATES COURT OF APPEALS
FOR THE NINTH CIRCUIT

NARANJIBHAI PATEL, et al.,

Plaintiffs/Appellants,

v.

CITY OF LOS ANGELES, et al.,

Defendants/Appellees.

Appeal from the United States District Court
For the Central District of California
Case No. CV 05-01571 DSF (AJWx)
[Consolidated w/ CV 03-3610 DSF (AJWx) and
CV 04-2192 DSF (AJWx)]

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* * *

E. Examination Of Hotel Registers Is A Valid Administrative Inspection Designed To Enforce Los Angeles Municipal Code § 41.49

In "situations of 'special need', where the privacy interests of the owner are weakened and the government interests in regulating particular businesses are concomitantly heightened, a warrantless inspection of commercial premises may well be reasonable within the meaning of the Fourth Amendment." *New York v. Burger*, *supra*, 482 U.S. at 702 (citation omitted). Nevertheless, "warrantless inspection ... even in the context of a pervasively regulated business, will be deemed to be reasonable only so long as three criteria are met." *Id.* (citation omitted). "Second, the warrantless inspections must be 'necessary to further [the] regulatory scheme.'" *Id.* (citation omitted). "Finally, 'the statute's inspection program, in terms of the certainty and regularity of its application, [must] provid[e] a constitutionally adequate substitute for a warrant.'" *Id.* (citation omitted). "In other words, the regulatory statute must perform the two basic functions of a warrant: it must advise the owner of the commercial premises that the search is being made pursuant to the law and has a properly defined scope, and it must limit

the discretion of the inspecting officers." *Id.* (citation omitted).

1. The Business Of Hotels Is A "Closely Regulated" Industry

"The business of keeping a hotel is closely related to the health and welfare of the public and has long been regarded as a thing affected with a public interest." *State of Ohio v. Norval Hotel Co.*, 103 Ohio St. 361, 363 (1921). "At common law an inn has been defined as a house which is held out to the public as a place where transient persons who will be received and entertained as guests for compensation; as a public house for entertainment for all who choose to visit it." *Id.* (citation omitted). "License statutes have been adopted in many states, under which the keepers of hotels are required to be licensed, and regulations are prescribed concerning, the maintenance and operation of hotels in the interest of the public health and welfare." *Id.* "No principle is better established than that when an owner devotes private property to the public use he so devotes it bound with notice that it will be subject to public regulation, both as to its use and as to the compensation to be paid for it. (*Minn v. Illinois*, 94 U.S. 113.)" *Id.* The provisions regulating the activity of hotels are extensive[3]. As such, an operator of a

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[3] See e.g., Business and Professions Code §§ 17024, 17210, 17538.8, 17538.8, 17539.5, 17560 et seq., 17568, 17568.5, 19800 et seq., and 23355.2; Civil Code §§ 51 et seq., 54 et seq., 55, 1859 et seq., 1861 et seq.; Corporations Code §§ 31000 et seq.; Health and Safety Code §§ 1270, 13006.5, 13113.7, 13210 et seq., 13220 et seq., 17910 et seq., 17920.8, 17921,

hotel has a reduced expectation of privacy in this "closely regulated" business.

2. There Is A Substantial Government Interest That Informs The Regulatory Scheme Pursuant To Which The Inspection Is Made

The City has an interest in regulating the hotel business because of the public health and safety issues surrounding an industry that has begun renting its rooms by the hour resulting in the facilitation of prostitution and other criminal activities.

Appellants have acknowledged some of the City's concerns and on some of the motel registration cards utilized by Appellants, the following notice is printed on the registration card:

> "... I the undersigned, give my full consent and acknowledge my desire to provide myself in the privacy of my own room, which I have rented. I also agree that I will not permit any person under 18 years of age to occupy and any person be a guest in my room at any

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17921.1, 17921.3, 17922.6, 17922.7, 17927, 19955 et seq., 24500 et seq., 114368 et seq.; Los Angeles Municipal Code §§ 12.11A.4, 12.12A.2, 12.13A.1.5, 12.21A.4, 21.7.1 et seq., 41.49, 47.01, 57.112.05, 66.17.1; and Penal Code §§ 193.8, 330.9, 365, 365.5, 396, 537, 602, 653n, 653z, 12078, 12081, 12553, 12555. (Originally cited to the district court in the City's First Amended Trial Brief – document 42.)

> time. I fully understand that the management of this motel does not allow prostitution in the motel nor do they permit any prostitute to occupy any room in this premises. I declare that I am not a prostitute and I agree with the management in excluding prostitution. I have read the above fully before signing it."

Other motel registration cards contain similar language, e.g., "ABSOLUTELY NO PROSTITUTION, NO DRUGS ...."

Appellants share the City's concerns which are expressly conveyed to its guests through the pre-printed notice on the motel registration cards. By their conduct, Appellants also recognize the City's regulatory interest surrounding § 41.49 and have engaged in a practice to further the objectives of the regulatory scheme.

The California Supreme Court recognized that "[u]nder the Penal Code of this state, keeping or knowingly letting any tenement for the purposes of prostitution, keeping a house of ill-fame resorted to for the purposes of prostitution or lewdness, or residing therein, are criminal offenses, and every person who lives in or about such houses, and any common prostitute, is a vagrant. (Pen. Code, Secs. 315, 316, 647.)" *Pon v. Wittman*, 147 Cal. 280, 292 (1905). "These laws have for their object the prostitution and suppression of prostitution .... Their maintenance directly tends to corrupt and debase public morals, to promote vice, and to encourage dissolute and habits, and the suppression of nuisances of this character, and having this tendency, is one of the important duties of

government." *Id.* "The suppression of such houses, as evidenced by the stringent laws concerning them, is the public policy of the state, and their abatement is to be accomplished by any reasonable and effective means which does not involve a breach of the peace or the invasion of private rights." *Id.* at 292-293.

By requiring hotel operators to keep a hotel register that includes a guest's name, address, and motor vehicle information, if applicable, such requirement deters prostitution and/or other criminal activities. (See Declaration of Eric Moore attached to the City's Trial Brief – docket 37.) Prostitutes and/or other criminals have been reluctant to provide their true identity and/or provide false identifying information. (See Moore Decl.) As such, due to the nature of the motel industry, the public health and safety concerns are understandable and the City's actions support its regulatory objectives.

3. Warrantless Inspections Are Necessary To Further The Regulatory Scheme

Regulation of the hotel industry reasonably serves the City's substantial interest in regulating an industry that poses health and safety issues involving prostitution and other criminal activities. "If inspection is to be effective and serve as a credible deterrent, unannounced, even frequent, inspections are essential ... the prerequisite of a warrant could easily frustrate inspection; and if the necessary flexibility as to time, scope, and frequency is to be preserved, the protections afforded by a warrant would be negligible." *Burger*, *supra*, 482 U.S. at 710 (internal quotation marks omitted).

By requiring that hotel operators record the name, address, and vehicle information of each of its guests, § 41.49 furthers the City's regulatory scheme to deter prostitution and other criminal activities at such hotels. Therefore, warrantless administrative inspections pursuant to § 41.49 are required to regulate an industry that coincidently facilitates prostitution and other criminal activities.

4. § 41.49 Advises Hotel Operators That An Inspection Of Hotel Registers Is Made Pursuant To Law And Has A Properly Defined Scope, And Limits The Discretion Of The Inspecting Officers

"To perform this first function, the statute must be 'sufficiently comprehensive and defined that the owner of commercial property cannot help but be aware that his property will be subject to periodic inspections undertaken for specific purposes.' *Donovan v. Dewey*, 452 U.S. at 600." *Burger, supra*, 482 U.S. at 704. "In addition, in defining how a statute limits the discretion of the inspectors, we have observed that it must be 'carefully limited in time, place, and scope.' *United States v. Biswell*, 406 U.S. at 315." *Id.* "[I]n some situations, inspections must be conducted frequently to achieve the purposes of the statutory scheme." *Id.* at 711, fn. 21 (citation omitted).

In *Burger, supra*, N.Y. Veh. & Traf. Law 415-a5 permitted police officers to inspect registration records of motor vehicles, trailers, and major component parts thereof The United States Supreme Court found that "[s]earches made pursuant to 415-

a5 ... clearly fall within this established exception to the warrant requirement for administrative inspections in 'closely regulated' businesses." *Burger, supra*, 482 U.S. at 703. The Court explained that while "limitations, or the absence thereof, are a factor in an analysis of the adequacy of a particular statute, they are not determinative of the result so long as the statute, as a whole, places adequate limits upon the discretion of the inspecting officers." *Id.* at 711, fn. 21. Similarly, in *United States v. Biswell*, 406 U.S. 311, 311-312 (1972), the United States Supreme Court approved a statute that "authorizes official entry during business hours into 'the premises (including places of storage) of any firearms or ammunition ... dealer ... for the purpose of inspecting or examining (1) any records or documents required to be kept ... and (2) any firearms or ammunition kept or stored by such ... dealer ... at such premises.'" (See *People v. Potter*, 128 Cal.App.4th 611 (2005) (where the Court upheld the constitutionality of Vehicle Code § 2805 which limited inspections of premises that provide auto related services to the public, whenever possible, to be conducted at a time and in a manner so as to minimize any interference with, or delay of, business operations).)

Analogously, § 41.49 is limited in time, place, and scope of the inspection. The scope of the inspection is limited to the hotel registers only. The place for such inspection is limited to the hotel premises in the guest reception or guest check-in area or in an office adjacent to that area. The time of the inspection is limited to the normal business hours of the hotels. As such, the permissible scope of

these searches is narrowly defined. Moreover, § 41.49 places adequate limits upon the discretion of the inspecting officers. Therefore, § 41.49 is *not* facially unconstitutional.

5. Governmental Agencies Can Address A Major Social Problem Both By Way Of An Administrative Scheme And Through Penal Sanctions

"Administrative statutes and penal laws may have the same ultimate purpose of remedying the social problem, but they have different subsidiary purposes and prescribe different methods of addressing the problem." *Burger*, *supra*, 482 U.S. at 712. "An administrative statute establishes how a particular business in a 'closely regulated' industry should be operated, setting forth rules to guide an operator's conduct of the business and allowing government officials to ensure that those rules are followed." *Id.* at 712-713.

In the instant case, the regulatory purpose of § 41.49 is served by having inspecting officers review the hotel registration card(s), and if possible, compare the information detailed on the registration card(s) to any observation(s) made by the officer of the guest(s) that checked in. To forbid inspecting officers the opportunity to review the hotel registration cards and/or make such comparisons, it would permit a hotel operator to thwart the purpose of the administrative scheme and, coincidentally, continue to foster prostitution and/or other criminal activities.

V.

CONCLUSION

For all the foregoing reasons, the City respectfully requests that the district court's ruling on the constitutionality of § 41.49 be affirmed.

Dated: May 21, 2009

ROCKARD J. DELGADILLO, City Attorney
LAURIE RITTENBERG, Assistant City Attorney
TODD T. LEUNG, Deputy City Attorney

By /s/ Todd Leung
TODD T. LEUNG, Deputy City Attorney

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CITY OF LOS ANGELES

EN BANC ORAL ARGUMENT

[No official transcript was prepared; this was transcribed from video at http://www.ca9.uscourts.gov/media/view_video.php?pk_vid=0000006213]

08-56567

Naranjibhai Patel, et al.

v.

City of Los Angeles

Held before the United States Court of Appeals for the Ninth Circuit, June 24, 2013 in Courtroom One of the William Kenzo Nakamura United States Courthouse in Seattle, Washington.

Before Chief Judge Kozinski, and Circuit Judges O'Scannlain, Fisher, Berzon, Tallman, Clifton, Callahan, Smith, Murguia, Christen, and Watford

Frank Weiser, for plaintiff-appellants Naranjibhai Patel et al.

Todd Leung, for defendant-appellee the City of Los Angeles.

CHIEF JUDGE KOZINSKI: Good afternoon. Please be seated. We are here for the en banc argument in *Patel v. City of Los Angeles*. Counsel ready?

Okay, we'll hear from the Appellants.

MR. WEISER: Good afternoon, Your Honor. It's Frank Weiser on behalf of the Appellants

Naranjibhai Patel and Ramilaben Patel and the Los Angeles Lodging Association and its members, which was part of the consolidated cases by Judge Fisher. There were actually three cases and some 40 or 42 plaintiffs who were a part of that. But Naranjibhai Patel and Ramilaben Patel were the lead Plaintiffs as consolidated by Judge Fisher.

I'd like to start out by addressing Judge Kozinski's order. I believe he ordered last week that we address the relevance of the *Sibron v. New York* case at 392 U.S. 40. It's a 1968 U.S. Supreme Court case to the—and I'm gonna use, if the court will allow me—generically this is the Patels' facial challenge to the Fourth Amendment challenge to the LAMC ordinance, the motel register inspection and ordinance.

I take it that what the court is saying is that there may be some objection to a general facial challenge under the Fourth Amendment irrespective of the *Salerno* issues, and I take it by the fact that just looking at what *Sibron* was in general, it was a stop-and-frisk statute that was allowed to be done under reasonable suspicion by police officers in New York. The particular case was: there was a stop and questioning of an individual for whether he was drug dealing—

JUDGE TALLMAN: Mr. Weiser, the concern is that you have brought a facial challenge and you dropped your as-applied challenge, and the District Court only tried a facial challenge. So you are asking us to pass on the constitutionality of the statute itself without any consideration of facts, and if a statute is facially valid, if the court can conceive of a set of

facts that would render it so, how can we proceed any further? As I read the language in *Sibron*, the Court told us that the case is over at this point. That's the end of it.

MR. WEISER: And I was going to address that, Judge Tallman. I just want to get into the factual background. Of course the court knows about the *Sibron* case, but *Sibron* was saying that the constitutional validity of a warrantless search is preeminently a question of the facts of the individual case—so looking at the facts of the individual case. And I think that's true, in general. I think, obviously, the touchstone of any Fourth Amendment analysis is reasonableness, and generally reasonableness is judged by the facts of the individual search. But what we have here is a programmatic search and, in particular, an administrative search—warrantless search scheme—for commercial premises in which the Supreme Court and this circuit in the *Tucson Women's Clinic v. Eden* case back in 1994 did entertain—or looks at the face specifically—the analysis looks at the face of the statute and essentially does turn or can turn on a civil facial challenge.

JUDGE BERZON: Isn't another difference– another difference, or maybe a related difference, is that *Sibron* was a statute that did not authorize...it itself had a substantive standard, reasonable suspicion. But here, the authorization is with absolutely no cause of any kind.

MR. WEISER: And I was going to—I appreciate that Judge Berzon. I think that that's absolutely true and, in fact, of all the categories of warrantless suspicionless searches—and I think they were very well delineated by Judge O'Scannlain in the *Kincaid* case—but of all those categories, the only one in which the Supreme Court has said you either have to have a warrant or you have to have a substitute warrant on the face of the statute is the *Burger* type.

JUDGE TALLMAN: But Mr. Weiser, aren't you reading into the ordinance language that does not appear there? You want to add the words that the officer can ask for an inspection of the records without a warrant. And the ordinance doesn't say with or without. We don't know.

MR. WEISER: There was a stipulated fact, and I think that the opinion that preceded this en banc hearing, and I think—you know, I'm not, certainly not saying anything on that, but there was a stipulated fact that said as follows, if the court will just indulge me for a second.

Well, actually it was in Judge Fisher's findings of fact, but it was a little different than the published opinion. The stipulated fact said, and that was what informed the operation or the interpretation of the statute, the language in the statute.

"Plaintiffs have been subject to and continue to be subject to searches and seizures of motel registration records by the Los Angeles police department without consent or warrant, pursuant to LAMC § 41.49," and then it goes on, "which permits law

enforcement to demand inspection of motel registers at any time without consent or warrant."

JUDGE TALLMAN: Well, suppose they arrive on exigent circumstances that a robbery or kidnapping had just been committed and somebody on the street said "the kidnapper is named David Smith and he's living at your client's motel?" Wouldn't the officers under that circumstance be able to make a demand to inspect the records of the motel?

MR. WEISER: But that's different than *Burger* searches. What *Burger* searches are concerned about is which you have regular administrative searches pursuant to a statute or an ordinance and those—that statute or ordinance authorizes those regular inspections—suspiciousless inspections.

JUDGE TALLMAN: Do you concede that in my hypothetical that the search would be—the request to look at the records would be legal.

MR. WEISER: But it's not a *Burger* search. What we're looking at in a *Burger* search is the statute itself to see and balance between the public interest in the statute for the need for the regular inspections. What you're saying, Judge Tallman, is not pursuant to the statute.

JUDGE TALLMAN: But the statute simply says you've gotta maintain the records so they can be inspected by the police. It doesn't tell us the circumstances under which a request for inspection—

MR. WEISER: What the statute says is that the police can regularly inspect without suspicion for any reason, without cause pursuant to the statute. It's a regular configuration, not an exception.

CHIEF JUDGE KOZINSKI: Are you challenging the requirement that the records be maintained? Separately from the—there's the inspection part of it: they can come in, they can look at the register any time, with or withou—whatever. But there's also the requirement that they maintain these records. Is the challenge to that aspect of this?

WEISER: No, it is not. No is it not.

CHIEF JUDGE KOZINSKI: You're not challenging the requirement that your clients—I mean, let's say, I'm certainly not going to predict what this Court does, but let's say that eventually the search is struck down, your clients will continue to—I mean the authorization for the reading was struck down, your clients would continue to maintain the records.

WEISER: That's correct. And these are records that

CHIEF JUDGE KOZINSKI: If the police have probable cause or a warrant or a subpoena or something like that, the records would be there to be inspected.

WEISER: That's correct, Your Honor, Judge Kozinski.

JUDGE SMITH: Mr. Weiser, I have a different concept I'd like to ask you about. I was very

surprised to see that the plaintiffs were two individuals operating a motel. I'd never seen that before. I've always thought LLCs, corporations, something that would protect them from liability. I'm concerned about this, of course, for standing purposes. So my question is, do these two individuals own the hotel and the ground they're on in fee?

MR. WEISER: Yes they do, Your Honor.

JUDGE SMITH: They do. So there's no real entity that holds title.

MR. WEISER: No, there's no difference between the Patels and who holds title. And that goes for Los Angeles—these are smart businessmen but they're not sophisticated, necessarily, in the intricacies of liability law.

JUDGE SMITH: You can understand why I would be surprised.

MR. WEISER: Yes I do. Whether that would allow them to assert the Fourth Amendment challenge or it would have to be the LLC. And I understand that and I appreciate it, Your Honor.

MR. TALLMAN: That was the reason I was concerned. Okay, thank you.

JUDGE WATFORD: Counsel, let me ask you this. I'm on the far—your far right.

MR. WEISER: Yes, Your Honor.

JUDGE WATFORD: So since you're not challenging the collection of the information, just the officer's ability to inspect it, can I ask this? Put aside this ordinance. If the city passed an ordinance that just said you had to, via let's say administrative subpoena, produce the records or the information in the records that the city wants, would you say that that would pose a Fourth Amendment problem as well?

MR. WEISER: I think what that would, Your Honor, it would be—well first of all, the subpoena process, at least in California, allows some kind of due process in court. First, the legislature passes a subpoena—I believe it's Government Code 37-100, and that can be appealed in court and I actually had a case up in City of Santa Cruz which was a published opinion by the Sixth District Court of Appeal that was cited and used by the California Supreme Court—I forget the name—in which they said you can appeal a judge's order affirming the legislative subpoena.

JUDGE WATFORD: Let me just be clear where I'm coming from. That to me is the main defect with this ordinance—is that there's no pre-compliance judicial review. But what I guess I'm trying to get at is there's something more than that that you think is problematic. That just the mere production of this information itself.

MR. WEISER: I think there are two prongs to it. I think what Your Honor is saying is correct in the sense that no process—there's unlimited discretion—based on the face of the ordinance and the stipulated

fact of what the ordinance means, and the police are given boundless discretion to inspect these records. And *Marshall v. Barlow* and *Burger* clearly say that if this is an administrative search program, even if it's less than probable cause as Judge Kozinski said, there's gotta be some limitation on the face of the ordinance of discretion, whether that limitation is a subpoena—I don't believe we've gotten to that point—but some discretion—

CHIEF JUDGE KOZINSKI: You're going to wait to bring the as applied challenge when that happens, right?

MR. WEISER: I don't know, Judge Kozinski, whether I'll be hired to do so.

CHIEF JUDGE KOZINSKI: Let's put it this way, you could or would reserve the ability to do that—

MR. WEISER: Correct, Your Honor.

CHIEF JUDGE KOZINSKI: Depending on the circumstances.

MR. WEISER: I understand that. But *Tucson Women's Clinic vs Eden*, *Burger*, clearly state—and *Marshall v. Barlow*. There's gotta be some limitation on the face of the ordinance. I think the concern was—and if the court will just indulge me for a minute—if one looks at the historical analysis of how these administrative search programs originated under *Marshall* and then *Burger*, there's an interesting debate and I just came across it preparing for the en banc hearing between Justice

Stevens and Justice White who wrote the *Marshall* opinion, and what *Marshall*—Justice White said in his opinion is we balance—they invalidated an OSHA inspection program that authorized warrantless inspections on the face of the statute and Justice White said no you have to have administrative warrants and that is to inform the owner of, even though it's less than probable cause, it has to inform the owner who has the authority under the ordinance to inspect, the scope of inspection and the time of inspection. But I just want to point out one point is that Justice Stevens, interestingly, I think very cogently, dissented and said, look, reasonableness is the touchstone of the Fourth Amendment and you're saying you gotta have a warrant in every case, but you can have searches without warrants in which it's still reasonable and that's because the reasonable search and seizure clause doesn't necessarily, absolutely necessarily tie to the warrant clause.

JUDGE CALLAHAN: Well, I have a question about that in terms of—are you saying that if you don't have a warrant you have to fall within one of the exceptions and say, like, the special needs or the administrative, and the special needs exception to a warrant requirement allows the government to conduct and administrative search or gain a warrant is impracticable and the government has a valid interest unrelated to law enforcement. Is § 41.49 about law enforcement? Or is it about improving public welfare?

MR. WEISER: Well, it was our contention that originally this was an administrative warrant

regulatory scheme but as it turned out in the pretrial conference order, the city, I believe, admitted that it was for crime control also and Judge Fisher found, as a conclusion of law, that it could be reasonably interpreted for crime control.

JUDGE CALLAHAN: So is it—so you keep saying that the touchtone—this touchstone—or whatever—is the general reasonableness test, right? So you're not contending, if I understand you correctly, that there always has to be a warrant unless one of the two exceptions applies. You still look to general reasonableness?

MR. WEISER: No, what I'm saying is—and I apologize, I think I'm misunderstanding. I think what I'm saying is that if it's an administrative search program under *Burger*, under *Marshall*, then it has to have a warrant or the exception is something on the face of the ordinance that limits discretion. That's a facial challenge under the administrative search program. If it's not found by the court to be an administrative search program in the sense that it's really for law enforcement purposes, then the ordinance just—per se—fails, because the police are using it to gather information and—

JUDGE CALLAHAN: So you're saying if it's not one of the exceptions then we don't look to general reasonableness?

MR. WEISER: No, if it is—if the police are allowed to use this, if the program is for purposes of

gathering information for criminal investigation, primarily for that, then it's per se unreasonable.

JUDGE BERZON: What— what—

MR. WEISER: That, I think, is was Judge Pregerson was trying to say or said in his dissent.

JUDGE BERZON Perhaps I'm asking the wrong person, but what would be the administrative purpose of this kind of inspection that wasn't for purposes of crime protection?

MR. WEISER: I think Mr. Leung said in his pretrial conference order that they were health and safety reasons that went along with the so called illicit activity.

JUDGE BERZON: Which is crime enforcement.

MR. WEISER: Right. For want of a better politeness, prostitution and drug activity.

JUDGE BERZON: Right, but that's crime enforcement.

MR. WEISER: Right.

JUDGE BERZON: And the safety is the safety from crimes.

MR. WEISER: Right.

So is—are you asking, Judge Berzon, what is—

JUDGE BERZON: I'm just wondering what—you said you originally thought this was an

administrative warrant situation but then you later learned it was really about crime enforcement. But I'm just a little mystified by what the administrative purpose would be that isn't crime enforcement.

CHIEF JUDGE KOZINSKI: Could it be over occupancy of the rooms? If—I'm just wondering. I'm asking a question, I don't know. Could it be like the room is only safe for family of five but—

MR. WEISER: That could be a possibility.

CHIEF JUDGE KOZINSKI: —it has seventeen or... whatever.

MR. WEISER: Yeah, I suppose what—

JUDGE BERZON: You would need a driver's license for that. You wouldn't need the license plate for that. You wouldn't need a lot of information for that.

MR. WEISER: Who is staying in the room, how many people are staying in the room. That would go to the license—the information on the cards—the registration cards that they would want to know how many people are staying in the room.

JUDGE O'SCANNLAIN: Counsel, what significance should we attach to the fact that these are records that are required to be kept. In other words, these are not necessarily the records that the hotel itself might want to keep on its own. Is that significant in any way?

MR. WEISER: Well, first of all, I take issue, Your Honor, that these are not—these are records they

wouldn't want to keep. These are regular records that any motel operator would anyway keep.

JUDGE O'SCANNLAIN: Yeah, but the ordinance specifically orders every operator of a hotel shall keep a record in which the following information is included.

MR. WEISER: At the three-judge panel level I filed a FRAP 28-J letter and I indicated there was a circuit split going back to OSHA inspections where they were required to keep OSHA records, in which I believe it's the 6th, 11th and 4th Circuits where they say that the fact that it's required to be kept, I believe the 6th and the 11th Circuits says there's no such thing as a required record doctrine under the Fourth Amendment. It's been applied in Fifth Amendment challenges, but not in Fourth Amendment issues and 4th Circuit does say that. And then I also cited a *De La Cruz v. Quackenbush* case in the Second District Court of Appeal by Justice Johnson, and I think that case—although it's certainly not binding on this court—the logic is compelling. In that case the insurance inspector—the insurance agent was required under California Insurance law to keep records for inspection by the insurance commissioner without, on demand without a warrant. He refused to do so. He lost his license. He took it upon a writ to Superior Court Judge Yaffi. It was reinstated. It was found that it violated his Fourth Amendment rights and Justice Johnson affirmed and he said, and he went through a very, very extensive analysis that there's absolutely no required records doctrine that's ever been espoused by the U.S. Supreme Court. Now, as I said, there

may be a Circuit split, and this circuit has never decided that but as I understood, Judge Clifton's majority opinion in this case, he did not believe there was a required records—.

JUDGE O'SCANNLAIN: The majority opinion cited *Cormier*. Are you asking us to overturn *Cormier*?

MR. WEISER: No, I'm not. I think *Cormier* stands for the proposition that the one who has possession or ownership of the property or records is the one who has standing to assert the Fourth Amendment challenge. But the tenant or guest at the motel who doesn't have possession or ownership of the records cannot. He does not have reasonable expectation of privacy or now under *U.S. v. Jones* he certainly can't claim...

CHIEF JUDGE KOZINSKI: So if hotel owner were to provide the records voluntarily—if the hotel owner were to provide the records voluntarily—let's say for whatever reason said, "Oh yes, come in and inspect the record any time," the guest couldn't object.

MR. WEISER: I believe that's the law in this circuit, as I understand it.

CHIEF JUDGE KOZINSKI: And you're not asking us to overturn?

MR. WEISER: No, absolutely not.

JUDGE. WATFORD: Counsel, can I just come back to the question I posed to you again on the far right.

MR. WEISER: Sure.

JUDGE WATFORD: So if this ordinance were set up such that it required production of the information via administrative subpoena, are you arguing here that that would, on its face, be violative of the Fourth Amendment because a warrant is required?

MR. WEISER: Well, I think if it's a crime control ordinance and it is a ordinance that police are using primarily for investigating crimes—

JUDGE WATFORD: Let's just say it's like the ordinance we have here, just that the mechanism for production of information is different. And it's serving the exact same purposes of the existing ordinance but it's—the information is produced via administrative subpoena. I'm just asking you, are you arguing that, I don't know, given the nature of the information, given the nature of your clients' business, that a warrant would be required. Or are you saying that administrative subpoena would be considered—

MR. WEISER: No, I think *Marshall Barlow*— *v. Barlow*, and *Burger*, even if it's administrative search scheme and not crime control, requires an administrative warrant. It's gotta be a warrant. It's not a subpoena.

JUDGE WATFORD: Why?

MR. WEISER: Because the warrant informs the due process that the—

JUDGE WATFORD: Let's say that the—hang on—let's say that the hypothetical ordinance I'm

imagining does provide for pre-compliance judicial review so you get out of that whole issue you raised earlier about unlimited discretion of the officers, there is a means by which the recipient of the subpoena can come in and challenge that in court before having to produce the records. So let's say that that's built into it. I'm just trying to get a position—a sense of your position. Are you still saying that that would be violative of the Fourth Amendment because it doesn't require an actual warrant issued by a magistrate?

MR. WEISER: I believe the Fourth Amendment for protections under *Camara* searches, under administrative searches, is that it requires a warrant. That the warrant clause—

JUDGE WATFORD: Why is this information that your clients are not wanting to produce here? Why is it any different from the kind of information that's produced if it's been allowed to be obtained by the government via administrative subpoena in all sorts of other different contexts. I don't understand the difference.

MR. WEISER: I think, once again, maybe I'm being hard-nosed about it, but the cases themselves say that it is a warrant—it's the warrant clause that is operative here. That's the emphasis.

JUDGE FISHER: Where in *Burger* do you find that you have to have an administrative subpoena?

MR. WEISER: That you have—? *Burger* states clearly the third prong—

JUDGE FISHER: It has a function. There has to be enough notice in the pervasive nature of the regulation, but where does it provide that there has to be an actual warrant issued?

MR. WEISER: It's not—what *Burger* says is that if there's a special need such that is pervasively regulated, substantial governmental interest, the face of the statute is in effect the warrant.

JUDGE FISHER: But it's not specific. It's not specific to the individual. It doesn't go through any narrowing down. It's just the narrowing comes because the target happens to have to comply with the regulations and they know that.

MR. WEISER: Correct, but it's the equivalent of a warrant. That's what *Burger* says.

JUDGE SMITH: Mr. Weiser, as you well know, the Supreme Court recently decided the *Jones* case.

MR. WEISER: Correct.

JUDGE SMITH: And that went off on the property concept and papers and the like. The minority in the case of Justice Alito went off on the privacy expectation of privacy à la *Katz*. Here we've got both issues. You've got the *Jones* approach, you've got the *Katz* approach and of course all the other things that my colleagues have been talking about under *Burger* and so I'll follow *Katz*. In order to make out a facial challenge, do you have to meet both prongs or just one? In other words, if you show that you meet the *Jones* requirements, do you even have to get into the

reasonable expectation of privacy in order to prove your point? Or do you have to show both?

MR. WEISER: No, I think if you—and I had pressed that all along that there was an alternative property prong—

JUDGE SMITH: Either one is sufficient.

MR. WEISER: Either one is sufficient.

JUDGE SMITH: From your perspective to show—to meet the facial challenge.

MR. WEISER: That's correct. Although I would say although it once again the court through judicial prudence may not want to decide it, but I respectfully took issue that there was not evidence of a reasonable expectation of privacy. And I would...

JUDGE CLIFTON: What evidence?

MR. WEISER: If I—

JUDGE CLIFTON: What is the evidence?

MR. WEISER: When I thought about it, the *Camara* case.

JUDGE CLIFTON: In this case, what is the evidence of a reasonable expectation of privacy? Is there any expectation of privacy on the part of the Plaintiffs?

MR. WEISER: First of all, the ordinance itself, on the face of the statute says that these have to be

kept for tax purposes and that has been traditionally protected under the objective reasonable assets.

JUDGE CLIFTON: Is there any evidence whatsoever in the record that the Patels had an expectation of privacy in these documents?

MR. WEISER: Once again—

JUDGE CLIFTON: The answer, no.

MR. WEISER: If I might, Judge Clifton—

JUDGE CLIFTON: That's why I asked the question. So far I haven't heard the answer.

What is the evidence in the record of an expectation of privacy on the part of the Plaintiffs?

MR. WEISER: I was going to say that adding to what I had just said—

JUDGE CLIFTON: Well what you said is in reference to the ordinance. That's not a reference to the Patels' expectation of privacy.

MR. WEISER: And I was going to say that in reflecting on what Your Honor said in your opinion, it seemed to me that perhaps the issue had already been decided in previous Supreme Court decisions and that is, because under *Camara* searches, the Supreme Court has said that the owner has an expectation of privacy to his commercial—to be free of inspections of his commercial premises without a warrant.

JUDGE BERZON: What does private—privacy calls up notions of personal intimacy but in the context of the Fourth Amendment is that what it means, or does it mean essentially something that is protected from Fourth Amendment searches. It becomes a circular thing.

MR. WEISER: Right, all I'm saying is that I agree with the analysis that I don't have to have the privacy prong proven for purposes of the Fourth Amendment protection. But what I was saying was that doesn't mean that they don't have a privacy right.

JUDGE FISHER: What does—

MR. WEISER: And that privacy right originates out of *Camara*.

JUDGE FISHER: What are the—what are the elements of a reasonable expectation of privacy claim? Don't you have to establish that everybody in your, since it's facial, that every business person takes steps to protect the privacy. Isn't that a relevant question?

What if they leave all the information right on the desk?

MR. WEISER: The two prong test as I understand it under *Katz* is the particular individual's subjective expectation of privacy which I take it is what Judge Clifton is objecting to, there's no evidence of that, and then whether society would objectively protect it. What I'm saying is is that if *Camara* is taken on its face that they have a—it's already been decided

that they have an expectation of privacy under the Fourth Amendment to the commercial premises and the ordinance says on its face it's gotta be kept at the motel, then it would seem to be that's an adjunct or that falls within the scope of commercial premises.

CHIEF JUDGE KOZINSKI: You have three minutes left. Do you want to save it for rebuttal?

MR. WEISER: Yes, Your Honor.

CHIEF JUDGE KOZINSKI: Okay, we'll hear from the other side.

MR. LEUNG: Good afternoon, Your Honors. May it please the court, Todd Leung, Deputy City Attorney on behalf of the Defendant and Appellee, City of Los Angeles.

Sibron v. State of New York is relevant in this case because the Vourt there indicated that the constitutional validity of a warrantless search is pre-eminently the sort of question which can only be decided in the concrete factual context of the individual case.

The Court declined to draw into what it viewed as the abstract—an unproductive exercise of laying the extraordinary elastic categories—

JUDGE WATFORD: Counsel, let me ask you just, the statute or the ordinance in *Sibron*, would you say that there were circumstances in which that statute could be constitutionally applied. Seems to be that's what perhaps different about this case.

MR. LEUNG: I think that—

JUDGE WATFORD: Hang on—that the claim here is just simply no circumstance, period, in which this ordinance could be constitutionally applied whereas in *Sibron* the court said, "Look, we can't make a facial determination because there may well be some circumstances in which it could be."

MR. LEUNG: Well, in *Sibron* and other cases, it doesn't look so much towards the ordinance itself in terms of an application of the Fourth Amendment. When the search occurs, there's still the context of evaluating the search with respect to the Fourth Amendment as opposed to evaluating whether the search was constitutional under the ordinance or the state statute. And if we take a look at footnote 20, that talks about the elasticity of this ordinance and how the court shouldn't be drawn into that kind of a discussion. So we believe that it parallels this case here because there could be situations if the search actually occurred and if there were concrete factual studies.

JUDGE BERZON: The circumstances which would be valid would be ones that were permitted by a different constitutional—a constitutional rule and they would be permitted anyway. The statute is authorizing some set of searches that are not—as to which there is no constitutional exception and that's—as to that is what is being challenged.

MR. LEUNG: In a facial challenge, Plaintiffs bear the burden of establishing that there are no set of circumstances that would render this—

JUDGE BERZON: That's right. And what they're challenging is the authorization to do it warrantless and without suspicion and without otherwise meeting an administrative warrant requirement. That's what they're challenging. So the fact that you might be able to do a search under different circumsta—that is authorized in some other way, doesn't validate the statute.

LEUNG: The ordinance doesn't operate in all respects that it can't operate in any way other than an unconstitutional manner. It can operate in a constitutional manner.

JUDGE BERZON: How?

LEUNG: Well, if an officer were standing, waiting in line to be checked in at a motel, he hears a conversation ahead

JUDGE BERZON: Right, then he's not operating under the statute. There's no reason to rely on the statute at that point.

LEUNG: Well no no no, he would be relying on the statute because he would be there to say, "Hey, where is the motel registration because I just overheard the conversation there, I didn't hear anything about requesting a name "

JUDGE FISHER: But that's noncompliance with the statute. That's a specific, articulable incident. But that's not what they're saying. They're saying the whole requirement that they maintain all this information and regardless of anything else, the

police can come in and look at the registers without having to stand in line and overhear a circumstance that might create reasonable suspicion.

LEUNG: They're not challenging the requirement that the register be kept. The fact that an officer may come in to check compliance or noncompliance, there are circumstances which render this ordinance constitutional.

JUDGE BERZON: Which ordinance? The ordinance insofar as it requires the keeping of the records, or the ordinance insofar as it permits inspection without regard to whether they have any suspicion?

LEUNG: Well, I don't know that the ordinance says quite what your honor has articulated there. It's pretty elastic in that it doesn't confine it just to that parameter, in that an officer can come in there and inspect the motel registration records without any kind of suspicion. That's why we need a concrete set of facts in which *Sibron v. State of New York* is applicable here.

JUDGE BERZON: Does the stat—Was there not a stipulated fact that essentially says that you could do it—that this permits inspection without a warrant and without suspicion?

LEUNG: If I may correct your honor, it's just without a warrant—not without anything else. It's just without consent or a warrant that was the stipulated fact.

CHIEF JUDGE KOZINSKI: Wasn't *Marshall* a facial challenge?

MR. LEUNG: Your Honor, I don't believe—I don't recall that off the top of my head.

CHIEF JUDGE KOZINSKI: Let's assume it is. Doesn't that pretty much cure your argument?

Marshall follows *Sibron*, right?

Tuscon Women's Clinic certainly was, right?

MR. LEUNG: Well that's an inspection of private medical records which I think is different from where we're at. So if the touchstone of a Fourth Amendment—

CHIEF JUDGE KOZINSKI: The question is facial challenge. If your argument is "Well there must be some way a statute could operate constitutionally, you can't have a facial challenge," then *Tuscon Women's Clinic* should have come out differently, right?

LEUNG: Well I mean, if the touchstone of a Fourth Amendment analysis is reasonableness and we determine the facts based on

JUDGE SMITH: Where do we get that from?

LEUNG: I'm sorry?

JUDGE SMITH: Where do you get that it's reasonableness at least under *Jones*. Do you agree that this is a search—there's no question this is a

search under *Jones*, or under *Arizona v. Hicks*, or *New York v. Class*? This is a search, isn't it?

MR. LEUNG: It is a search, your honor, but if we

JUDGE SMITH: Under *Jones*, where does the reasonableness come into it?

MR. LEUNG: If we take a look at the majority decision and the three-panel judge—

JUDGE SMITH: No, I'm talking about the Supreme Court's case in *Jones*.

JUDGE CLIFTON: Perhaps in *Maryland v. King*?

JUDGE SMITH: Or *Maryland v. King*, yes.

JUDGE CLIFTON: Well that's the answer.

JUDGE SMITH: Well, we're not looking for DNA here. This is a question of whether it's a search, and you've got the police think they have some reason to put the GPS on a car. But the Supreme Court's treated this as property and under the Constitution your papers and so on are all supposed to be private unless there's some exception that's found, and where is the exception under *Jones*? I'm not talking about the *Katz* line of cases, but under *Jones*, where is the exception?

LEUNG: Well I'm not quite sure that there is an exception there. But if we take a look at *Jones* and the trespass line of thinking, we have to have some type of meaningful interference with the possessory interest. And we don't have that here.

JUDGE CHRISTEN: What set of circumstances would there be where you wouldn't have that here? How could they possibly come in and look at the records and not have a physical interference with private property?

LEUNG: Well, it's not so much it's a physical interference. I mean, I think you may not have that situation in today's time where things of this nature are kept in electronic format.

JUDGE CHRISTEN: Well, they still have to get at it; they still have to get to it, to follow up on Judge Smith's question. I mean that's what I'm trying to get to. I can't envision a circumstance where they wouldn't have to at least manipulate a computer.

LEUNG: Right, but does that mean that there is a meaningful interference with possessory—of a possessory interest? And we do not believe that there is such

JUDGE CHRISTEN: Arguably a lot more interference in that case than planting a bug under somebody's car that they don't even know is there—to draw the analogy to *Jones*, and that's what I'd like you to respond to.

LEUNG: I think there's a big difference between planting a tracker device on a vehicle, which, there is something there that actually follows it along, whereas with a hotel register it can be simple as a regular routine old—a regular register where someone just puts in their name and other information.

JUDGE SMITH: Are you denying that that's a search? I guess that's what I'd like to start with. Is what has to be done under any circumstances in the police looking at the register—is that not a search?

LEUNG: It doesn't rise to the level of a trespass because it does not

JUDGE SMITH: I didn't say that. I said is it a search? Under the caselaw? There's really no question, is there?

LEUNG: It's a viewing of the motel registration records of third party information.

JUDGE SMITH: Okay, let's assume for a minute that it is a search just for purposes of our discussion. If it's a search then you've got a real problem with *Jones*, don't you?

MR. LEUNG: We don't believe so because it doesn't—there isn't that meaningful interference with one's possessory interest.

JUDGE CALLAHAN: No. I think—I think you do have to look at *Jones* whether we like it or not. You know, it is the precedent and it would seem that the Supreme Court's recent decision in *Jones* holds that a person needn't show a reasonable expectation of privacy where the government physically trespasses upon his or her quote-unquote person, house, papers or effects. And so, don't the police physically trespass upon the Patels' papers or effects when they search their guest register? And so I'm wondering after *Jones*—before *Jones* I think the reasonable

expectation of privacy had some vitality, but after *Jones* does that leave any room for considering the Patels' expectations of privacy?

MR. LEUNG: *Jones* talks about a seizure of property occurs when there is a trespass but when there's some meaningful interference with an individual's possessory interest in that property, likewise with the search. So we do not believe that there is any meaningful interference here.

JUDGE CALLAHAN: It's not like they're left out on the counter for anyone to look through. It's not like it's a guest book or something like that. I mean, if I went into a hotel that information wouldn't just be out there that I could go look at.

MR. LEUNG: But this is a requirement that the Plaintiffs do not object to keeping the register:

JUDGE BERZON: That's keeping it—

JUDGE CALLAHAN: Has *Jones* changed the landscape at all?

MR. LEUNG: I'm not sure I'm following, Your Honor.

JUDGE CALLAHAN: Well, before *Jones*, you know, you looked at whether you could say—see you're arguing that they don't have a reasonable expectation of privacy in those documents because they're required to keep them and they know that. But it seems like *Jones* changes that and that argument may not have the same vitality. I'm not saying I like it, but you gotta answer that question.

MR. LEUNG: I don't think *Jones* changes *Katz* in that *Katz*, as we learned from *Katz*, ownership and possession are property concepts which cannot serve as the talismatic solution to every Fourth Amendment problem.

JUDGE SMITH: So you're saying, to follow up on Judge Callahan's point and what [inaudible] has been talking about, I ask your opposing counsel whether in order to show a facial constitutional issue they had to satisfy both *Jones* and *Katz*. It sounds like you're saying that they do, is that correct?

MR. LEUNG: In terms of papers, I'm not sure that the Court has indicated that they do or don't in both respect but papers are different from people's homes so I think there's more—

JUDGE BERZON: But they're directly in the Fourth Amendment.

JUDGE SMITH: Yeah, it's in the Fourth Amendment.

JUDGE BERZON: The Fourth Amendment says papers.

MR. LEUNG: Right, but paper could be something like what we have that there's no expectation of privacy in this.

JUDGE SMITH: Isn't a presumption of privacy in the papers. That's what Judge Berzon I'm sure was talking about. The Fourth Amendment specifically says, matter of fact I'm gonna read you here, the basic rule is that searches conducted outside the

judicial process without prior approval by judge or magistrate are per se unreasonable under the Fourth Amendment subject to only a few specific—specially, in well-defined exceptions, and when you're talking about papers, that is specifically mentioned in the Constitution, and you've gotta have a very strong showing to show that you've gotten outside of that expectation. Where is that here?

JUDGE SMITH: When you answer this question you've said it has to be significant intrusion. I don't know where you get that in light of *Arizona v. Hicks*, where simply moving a record player and looking at the serial number you had to move it. Could you work that into your answer?

MR. LEUNG: I think in that case where they had to actually reach into the car to move the papers to view the VIN number there's an intrusion—

JUDGE SMITH: This is—*Hicks* is where it was a turntable. They were arguing as plain view but they were—had to turn over the record player to see what the serial number was on it.

JUDGE FISHER: No, you're talking about *New York v. Class* which is like the one that Judge Fisher is talking about. Very little movement and yet there was a search involved. What's the difference?

MR. LEUNG: I think the difference is here we're talking about third party information that there's no privacy expected.

JUDGE BERZON: But that's not the question. The question is how is anybody gonna see these records without a physical intrusion. They're either gonna—if the person behind the desk says I'm not taking it out, what's he gonna do? He's gonna either seize some paper or he's gonna seize the computer and use it against the person's will and—there's no other way to do it. You can't look at somebody's records without, at least, for some period of time, taking some physical thing that the person is not choosing to give you.

MR. LEUNG: Actually, the police officers do not go and seize these—the computer or—

JUDGE BERZON: Not saying—they don't take it away but they, for some—in some way, for some period, take—have to have control over it. How else are they looking at these things?

MR. LEUNG: They actually don't, Your Honor. What they actually do is they write up the individual for not complying with the LAMC and that in turn—it becomes a misdemeanor and they go to court for violating, not keeping the register.

CHIEF JUDGE KOZINSKI: Oh, that's so much better.

MR. LEUNG: There's a process.

CHIEF JUDGE KOZINSKI: So, this is a coercion to say show me the computer or I will write you up and you'll go to jail?. And they say okay, I don't really want to let you see my computer but go ahead, take

a look at it, because I don't want to go to jail. Why isn't that a trespass right there? Because it's not a consented to access to the computer, or the record or whatever.

MR. LEUNG: Well, it's not a trespass in the sense that these records are being kept and there's no dispute or objection on the Plaintiffs' part with regards to keeping these and their failure to show that they are keeping it I don't believe is coercion. They don't have to and they have process in which if they believe that it becomes a Fourth Amendment issue they can take it up at that point in time with a concrete set of facts.

JUDGE SMITH: But counsel, with respect, you've had questions from a number of us here that deal with things like the *Hicks* case and the *Class* case, where the police just barely turn something over so they can see a VIN number, or they wanted to see something about a speaker. Hardly anything at all, certainly roughly equivalent to this. Those were found to be trespasses and unconstitutional searches. What's the difference here? You have not answered that in my view.

LEUNG: The difference is, here, in order to maintain these records, it doesn't have to be kept behind the counter or it doesn't have to be kept inside—within a computer. It can be done with a regular register that is left open to the public.

JUDGE SMITH: Well, but you don't leave those open to the public. Is there any evidence in this case to show that the Patels either leave their computer or

some paper product out on the counter and invite people to come and inspect it? There's no evidence of that, is there?

LEUNG: There's no evidence of that, your honor.

JUDGE CALLAHAN: They could get your credit card information. They could get your address. They could get all sorts of things. That's not—

MR. LEUNG: It doesn't have a credit card—

CHIEF JUDGE KOZINSKI: People wouldn't stay there a lot if they knew that somebody could walk in from the street and get all that information.

MR. LEUNG: It doesn't quite have all that sensitive information. It just says the method of payment. It doesn't quite have the credit card information. And the fact that this is third-party information that—

JUDGE CALLAHAN: What if you don't even want someone to know you're there?

MR. LEUNG: They don't have to—

JUDGE BERZON: I mean, there's no evidence and there would be no reason. You may think well they could leave it out but they don't leave it out and in general they don't leave it out. So if I decide that I'm not going to leave it out for all the reasons we're saying, then in order to get it you still have to do some kind of a physical trespass. Or at least threaten one. How else do you get it?

MR. LEUNG: We don't believe that there is any meaningful interference with their possessory interest, because we do not take it—

JUDGE BERZON: Can I ask a different question? Are you arguing that the rule of *Burger* would apply here, that you can justify this as if it were a *Burger*-like ordinance?

LEUNG: We've briefed it that way, your honor, but

JUDGE BERZON: Well I'm asking you what you're arguing now.

LEUNG: If it's an administrative search, the ordinance is narrow enough .

JUDGE BERZON: Is it an administrative search? Judge Fisher said it wasn't; it was for the purposes of crime enforcement.

LEUNG: Right. The judges that have reviewed this have not seen this as an administrative search.

JUDGE CALLAHAN: Is it a special needs search?

LEUNG: I don't believe that it is a special needs search.

JUDGE CALLAHAN: Let me ask you this. Let's just assume that, this is a hypothetical, but let's assume that *Jones* changed the landscape and so now it doesn't leave any room for considering whether the Patels' expectation of privacy is an issue. So then it's not an administrative search. It's not a special needs

search. We know there's not a warrant. So all that being said, can we still evaluate it for whether the search is reasonable?

LEUNG: Yes, your honor.

JUDGE CALLAHAN: And what is your best authority for that?

LEUNG: I don't have any specific case that I have in front of me, but the three-judge—the majority decision below, I mean, of the three-judge panel, did articulate the reasons for a trespass analysis. And there, the intrusion is minimal. It's limited. There's no seizure that's inherent on the face of the ordinance. The ordinance

JUDGE SMITH: How do you distinguish *Hicks*, and *Class* as we talked about before? How can those possibly be distinguished?

LEUNG: I think in *Class* you've got this situation where you're reaching into the interior of an automobile which is different from

JUDGE SMITH: Well, yeah, ok, but here, like with *Hicks* you've got they moved a defendant's stereo equipment to read the serial numbers on the back. That was held by the Supreme Court to be an unreasonable search. Because there was no probable cause. In *Class* you reach in the interior of the vehicle in order to move some papers so they could see the VIN number. That also constituted a search. Why is it not a search also to say I want to look in your computer and check some information. Isn't

that as intrusive as these others and would it not constitute a search? And if it does, then under *Jones*, don't you have a problem?

LEUNG: I think in the terms of if it's an electronic media that contains this information, it can be copied and given to the police officer. So there is no intrusion in terms of viewing the computer, using the computer, or anything of that nature.

JUDGE SMITH: You say it can be copied. You mean if the police officer says, you can just give me a copy. What if they don't say that? What if they—they have the authority, apparently, under the ordinance, to just go in and look, right?

LEUNG: But that's the need for a concrete set of facts, which we don't have here.

JUDGE TALLMAN: Aren't we back to *Sibron*? I mean it seems—Listening to this whole exchange, I'm looking at 392 U.S. at 59 and 60 in which the Court says, "We decline, however, to be drawn into what we view is the abstract and unproductive exercise of laying the extraordinary elastic categories of § 180a," which was the ordinance that actually laid out how you get warrants or conduct the searches, "next to the categories of the Fourth Amendment in an effort to determine whether the two are in some sense compatible. The constitutional validity of a warrantless search is preeminently the sort of question which can only be decided in the concrete factual context of the individual case." And the Court went on to say, "We can't determine the facial validity of this statute

without doing an as applied challenge which is what the rest of *Sibron* addresses." So why shouldn't we just follow *Sibron* and stop this hypothetical debate and declare that we can't determine the constitutional validity based on a facial challenge alone?

MR. LEUNG: I don't disagree with Your Honor's analysis there.

JUDGE SMITH: He didn't expect you to.

JUDGE CALLAHAN: You would have us overlook *Marshall v. Barlow* which is a more recent case where they did exactly that? What will we do with *Marshall v. Barlow*?

MR. KOZINSKI: A but see.

JUDGE TALLMAN: You should tell her leave to the Supreme Court the prerogative of overturning.

MR. LEUNG: I would defer to—

JUDGE BERZON: You would, what? Defer to Judge Tallman?

MR. LEUNG: I would defer to Judge Tallman's comment there.

JUDGE CALLAHAN: Okay. All right.

JUDGE BERZON: Is this really what the City wants? I mean, my understanding of the City's position of what it wants to do is exactly what the Petitioners here claim they are doing, and what

they're challenging. So if we were to leave it alone and then we'd have a bunch of as-applied challenges, wouldn't they all come out the same way because in fact what you're doing is exactly what they say you're doing or want to do otherwise, you'd gut the whole statute.

LEUNG: I'm not sure that an as-applied challenge would be the same as a facial challenge.

JUDGE BERZON: Why not? If somebody walks in—if the police walk in and say, "I want to see your register," or "I want to see your computer," and the person—maybe everybody'll consent, I suppose you could hypothesize that—but if everybody—and that obviously isn't true because these people are complaining. So if they say, "Well, we're not going to consent," and then what? Then you're exactly where we are now. So I don't understand why it's even doing you any good.

LEUNG: My understanding from my discussions with the Los Angeles Police Department is that they either find out that there's activity of this nature going on through sting operations or because of what they see. I don't know that they

JUDGE BERZON: Then they don't need the statute. Then they don't need the statute. They can get a warrant. Or they can—right?

LEUNG: The ordinance that's being challenged is half of one sentence with regards to making it available to LAPD upon request. The rest of the statute has to do with the keeping of this

ordinance—I mean the keeping of the register and the requirement to do so and the information that's contained therewith.

JUDGE BERZON: But you've agreed, as I understand it, that means without a warrant, and without consent.

LEUNG: Correct, your honor.

JUDGE BERZON: OK. So if they have probable cause they can go and get a warrant and they don't need this provision.

LEUNG: If your honor is saying they don't need half that sentence, I would be inclined to agree with .

JUDGE BERZON: But that's the only thing that's been challenged here is that sentence.

LEUNG: Right. And if there were a Fourth Amendment issue with a concrete set of facts, the plaintiffs could take that up and could challenge whatever that scenario would be.

JUDGE CHRISTEN: Counsel, could I ask you one more question? You referred a couple of times, or you tried to, I'm not sure we let you get a word in edgewise, but you referred to these records a couple times as third-party records. What that means to me is that you're harkening back to some case law we have where, for example, a bank customer gives information over to the bank and then doesn't have the ability to challenge the bank producing it. But why wouldn't I consider this registry to be more, from the motel owner's perspective, to be more akin

to a customer list where we've said that's a very different type of document? In other words, I'm looking at the compiled record of the folks checking into the motel. Why is that not a customer list?

MR. LEUNG: I think in terms of a customer list, depending on the nature of the business and the nature of the customer list, I think if we have a detailed factual scenario as to what kind of customer list we're talking about, I think we can do a better analysis, because if it's a customer list—let's say, for example, Starbucks takes down everyone's name for their drink orders and if someone writes that down or if there's new technology that you do all that information at a kiosk, all that information's available as to the person who ordered what kind of drink, how much it cost, and things of that nature.

There's no privacy interest there, with respect to if it's a customer list, let's say an individual or business—

CHIEF JUDGE KOZINSKI: Whose privacy are you talking about?

MR. LEUNG: We're talking about the—

CHIEF JUDGE KOZINSKI: The privacy of the customer—we're not here talking about the privacy of the customers. If Starbucks wants to make that information public then of course it has to suffer the consequences. I don't think they would but for losing customers. But we're not talking about Starbucks' privacy. They want to keep it secret. They don't want to let access to that information. Why isn't that exactly the same problem as we have here?

MR. LEUNG: We don't have that same problem because the information that's being conveyed, that privacy—the cases have already discussed that there is no priv—that that isn't private information.

CHIEF JUDGE KOZINSKI: It's not private with respect to the third-parties but why isn't it private with respect to Starbucks whose keeping the records and, you know, let's say, for example, they're accused of not paying enough sales tax, all right? Because they, you know, and they say, "Well look, we have records. We have records showing how many cups of coffee we sold so the way we're going to prove up our tax liability is by providing this." Why isn't this protected information as it with Starbucks?

MR. LEUNG: Your Honor, that raises a good point also.

CHIEF JUDGE KOZINSKI: As in *Marshall v. Barlow*, as in *Dow*.

MR. LEUNG: That raises a good point, Your Honor. The city also has an LAMC with regards to tax and how this information is to be made available to the city as well. So if—since the information is gonna be revealed anyways, it becomes sort of an academic exercise on the Plaintiffs because it doesn't really give them any kind of substantive relief here. One part of the city—

JUDGE BERZON: I don't understand what you just said. It's going to be revealed anyway because...?

MR. LEUNG: There's another—as Chief Judge talked about—since it's for tax purposes it's gonna be revealed to another party. So since it's gonna be revealed to the city just the same—

JUDGE SMITH: Under what process would it be revealed?

MR. LEUNG: It's an ordinance that—

JUDGE SMITH: What process? Not law. What's the process?

MR. LEUNG: I'm not familiar with the process.

JUDGE SMITH: Is it an administrative process so that they would have the right to object to it? Can the police or the city inspector just walk in and demand to see—

MR. LEUNG: The face of the ordinance just says they shall produce it.

JUDGE SMITH: That's not quite the same situation, is it?

JUDGE BERZON: They produced everything in it or they produce the bottom line? And then everything in it if they need to back it up? I mean, that's the way tax ordinances usually work. You produce a bottom line and then if somebody challenges it you have to prove it up.

MR. LEUNG: But it would be the same information here with respect to the guests.

JUDGE BERZON: Just the bottom line is the same information? I.e. how much money they collected from everybody who walked in?

MR. LEUNG: Well, no, no. I think it would be the number of residents. I guess that would—

JUDGE BERZON: But even the number of residents. That's different from who and what their driver's license is and everything else. Their licenses and so on.

MR. LEUNG: We just record the license plate which is visible to everyone in the public.

JUDGE BERZON: I explained that's what I mean.

MR. LEUNG: We don't ask for the driver's license though.

JUDGE BERZON: The tax people need the license plate?

MR. LEUNG: I don't know with respect to that.

JUDGE BERZON: One other question, or maybe observation, is do you think that hotels are not concerned about keeping this information private for their own business reasons such that if, for example, somebody hacks into a hotel computer and starts taking the information about their customers, you think a hotel couldn't get sued for a privacy violation? A contract violation? And/or a California privacy violation? It's hacked.

MR. LEUNG: What the third party knowingly gives away, the cases already said—

JUDGE BERZON: I'm not talking—that's constitutionally—but in terms of whether there—whether the hotel has an interest in protecting these—this information from exposure because, other than constitutionally, they are subject to liability. That is, either on a contract basis or, for example, and for California constitutional privacy protection. It's a different question, isn't it?

MR. LEUNG: The information that's contained in the ordinance isn't sensitive with respect—I don't think it rises to that level because it asks us for the name of the individual, the number of guests that are showing up, the method of payment...

JUDGE CALLAHAN: Why isn't that just like a customer list, counsel?

MR. LEUNG: I think it depends on the nature of the customer list because if I were a company that did my research and I have this special product that I'm marketing and I've got a customer list that I know these individuals are interested in this product, I think it's a little bit different than any Joe Public who walks in through the door and just says, "Hey, I need a room for the night or for the hour or whatever the circumstance may be."

CHIEF JUDGE KOZINSKI: How do you know that's how they do it? I mean, you know, I'm not in the hotel business. Maybe having a list of customers of frequent cheap motels is a valuable asset. You

know, you can market to them, you can send them e-mails, there's all sorts of ways you appeal to that segment of the market. I mean, I don't know what kind of establishment the Patels have, but I assume it's not a, you know, a Hyatt or something like that. So why is knowing the people who—why wouldn't a competitor, for example, benefit from knowing who these customers are so that the next time they're in town they will steal away the customers.

MR. LEUNG: There's no evidence in this case that such marketing techniques occur in this type of—

JUDGE BERZON: What about Google? Doesn't Google have a concern if somebody hacks into Gmail and reads everybody's e-mail even though they have the e-mail and even though the people who don't have any protection with regard to Google and may have a *Miller* problem, but still, nobody really likes to deal with companies that are giving all their information out.

LEUNG: But we're not giving all the information out. All we're doing

JUDGE BERZON: OK, some information they would rather not give out, such as I was in that hotel that night with somebody that my wife didn't know about. I was there when my parents thought I was somewhere else.

LEUNG: The ordinance doesn't require that they give out their true names. It just requests a name, and it doesn't need to be authenticated. So the fact

that the individual who doesn't want anyone to know

CHIEF JUDGE KOZINSKI: But most people think that if they lie in a hotel register they might be committing a crime, I don't know. Anyway, you are out of time, unless there are other questions, I think we'll thank you.

MR. LEUNG: Thank you, Your Honor.

CHIEF JUDGE KOZINSKI: I believe that Appellant had three minutes left. If you wish to take it, if not... We'll make an even three minutes, you know.

MR. WEISER: I will, Your Honor. And I probably shouldn't open my mouth but there is a case the Supreme Court recently decided, *Florida v. Jardin*, and that case, I think, perhaps answers up Judge Tallman's objection under *Sibron*. It was a case that followed up *U.S. v. Jones*. The police came with a trained police dog onto somebody's front porch to collect information and the question of reasonableness came up with the reasonable no expectation of privacy, the Supreme Court didn't even look at that—didn't analyze it under reasonable—

JUDGE TALLMAN: That's a trespass onto the property. The problem you've got here is that the hotel lobby is open for any member of the public to walk into it and if you assume, for purposes of trying to decide whether there's any set of facts under which this ordinance could be valid, that this is an old fashioned motel that keeps its guest book in the

form of a register that's open on the counter for all to see, wouldn't that be a situation where the ordinance would be valid without violating any of these Supreme Court cases?

MR. WEISER: The Supreme Court said that if there's a physical intrusion into the papers, it doesn't fall within the issue of whether it's open or not open, reasonable expectation of privacy or not. It's a constitutionally protected area because it's papers protected under the Constitution. If there's a physical intru—it said it very clearly—they said that the individual came on with the trained police dog had his feet on his property—that's all that was required.

JUDGE TALLMAN: Where is the intrusion in my hypothetical?

MR. WEISER: The intrusion is that they are looking through or they are taking his papers, looking at the information.

JUDGE TALLMAN: Is the mere act of eyeballing the open guest register an intrusion? Is that what you're saying?

MR. WEISER: The fact that they are allowed to inspect—they're given the authority to inspect, demand the inspection of the records is the intrusion.

JUDGE SMITH: Is there any evidence in this case that the records, whatever their form were indeed open.

MR. WEISER: No.

JUDGE SMITH: and available for the public?

MR. WEISER: No.

JUDGE SMITH: So, these were papers so far as the record shows, they were kept—held in some fashion behind the counter, not on top.

MR. WEISER: The ordinance has asked they be kept on the commercial premises.

CHIEF JUDGE KOZINSKI: I am actually old enough to remember a hotel with registers—open registers. And I was just wondering, are people were allowed to just come in and look through them off the street?

MR. WEISER: As far as I know, not.

JUDGE SMITH: Only in movies.

MR. WEISER: I think what *Jardin* said was that you had to be in the case of where they came on with trained police dog, a common law license to consent. So the motel owner still has some right to exclude who can look at it and who can't.

JUDGE SMITH: Just to end up with your point then... as far as you're concerned, *Sibron* is satisfied because under *Jones* and under the Florida case that you cited, we don't even have to get into the fact and intensity of investigation that *Katz* and the special circumstances would require. This is—if it's a

search, there's no evidence of consent, it's done from your perspective, is that right?

MR. WEISER: That's correct. And I would add that I think that's what Judge Pregerson was saying when he was saying it was per se unreasonable.

CHIEF JUDGE KOZINSKI: Thank you.

MR. WEISER: Thank you, Your Honors.

CHIEF JUDGE KOZINSKI: Case as argued will stand submitted. We are adjourned.

PETITIONER'S BRIEF

Supreme Court, U.S.
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No. 13-1175

IN THE
Supreme Court of the United States

CITY OF LOS ANGELES,
Petitioner,

v.

NARANJIBHAI PATEL, ET AL.,
Respondents.

ON WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE NINTH CIRCUIT

BRIEF FOR PETITIONER

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QUESTIONS PRESENTED

City of Los Angeles Municipal Code § 41.49 requires hotels to record and maintain certain basic information about their guests in a register and to make the register available for police inspection. Plaintiffs brought a facial challenge asserting that § 41.49 violates the Fourth Amendment by authorizing unreasonable searches. The questions presented are:

1. In light of this Court's admonition that "[t]he constitutional validity of a warrantless search is preeminently the sort of question which can only be decided in the concrete factual context of the individual case," *Sibron v. New York*, 392 U.S. 40, 59 (1968), did the Ninth Circuit err in using a facial challenge to strike § 41.49 as a violation of the Fourth Amendment on reasonableness grounds?

2. Given the centuries-old regulation of inns and hotels, the City's century-long requirement that hotels allow the police to inspect the registers without notice, and the hotels' minimal expectation of privacy in basic guest information they collect for the City's benefit, did the Ninth Circuit err in holding that § 41.49 is unconstitutional on its face?

PARTIES TO THE PROCEEDINGS

The petitioner is the City of Los Angeles.

Respondents are Narajibhari Patel, Ramilaben Patel, the Los Angeles Lodging Association, Rajendrakumar N. Bhakta, Manjula Bhakta, Manharbhai G. Bhakta, Sarojben D. Bhakta, Praful K. Bhakta, Hitendra D. Bhakta, Pankaj Patel, Naranbhai Patel, Deepak Patel, Dinesh Patel, Jitubhai Bhakta, Ratlalbhai Patel, Ashokbhai Patel, Kamalbhai Patel, Dilip Denaplya Sanmukh Patel, Kishor Bhakta Raman Bhakta, Jayesh Bhajta, Mahedra Bhakta, Yogesh Patel, Sanmuka Bhakta, Pratap Bhakta, Jitendra Bhakta, Praful Patel, Nilesh Bhakta, Kiranbhaj Bhakta, Dilip Patel, Naresh Bhakta, Vijay Patel, Rambhai Patel, Pravin Bhakta, R.N. Ghandi Hasmukh Patel, and Bharatbhai Bhakta, all of whom are named plaintiffs and appellants in the related and consolidated cases CV05-1571 DSF, CV04-2192 DSF, and CV03-3610 DSF.

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OPINIONS AND ORDERS BELOW

The district court's unpublished opinion is available at 2008 WL 4382755 and reprinted at P.A. 49-57. The panel decision of the court of appeals is reported at 686 F.3d 1085 and reprinted at P.A. 35-48. The en banc decision of the court of appeals is reported at 738 F.3d 1058 and reprinted at P.A. 1-34.

JURISDICTION

The court of appeals entered judgment on December 24, 2013. The petition for a writ of certiorari was timely filed on March 24, 2014, and granted on October 20, 2014. This Court has jurisdiction under 28 U.S.C. § 1254.

STATUTORY PROVISIONS INVOLVED

L.A., Cal., Mun. Code §§ 11.00 and 41.49, are reproduced in full at the statutory addendum at the end of this brief, as are their relevant precursors: L.A., Cal., Ordinance 177966 (Oct. 6, 2006); L.A., Cal., Mun. Code § 41.49 (1964); L.A., Cal., Mun. Code § 47.01 (1936); L.A., Cal., Penal Ordinances §§ 995-97 (1899); L.A., Cal., Mun. Code § 11.00(m) (1936).

INTRODUCTION

"[S]unlight is said to be the best of disinfectants." Louis Brandeis, *Other People's Money* 92 (1914). What Justice Brandeis said of public corruption holds equally true for the seedier crimes that have become the scourge of many cities, such as human trafficking, prostitution, and drug dealing. They all

flourish in the cast of anonymity and darkness. That is why hotels and motels often become hotbeds of crime. "The very nature of overnight lodging makes it conducive to crime and disorder." Karin Schmerler, Center for Problem-Oriented Policing, *Disorder at Budget Motels* 2 (2005). That is true of establishments as reputable as the Mayflower Hotel. But particularly problematic these days are so-called "parking-meter motels" that are a blight in many high-crime areas: Guests pay small hourly rates, in cash, to conduct their illicit business, and slink in and out anonymously and undetected.

The City of Los Angeles has a simple strategy to use sunlight to deter crime in hotels and motels of all sorts: an ordinance, Los Angeles Municipal Code ("LAMC") § 41.49, that requires hotel operators to record basic information about their guests and make the registers available for police inspection. Prostitutes, johns, dealers, and other criminals who know that the police can scan a hotel's register at any time think twice about conducting their illicit activities in the hotel. The strategy has been remarkably successful in deterring crime, which is why scores of cities throughout the country have adopted it.

This deterrent has a long tradition. The City of Los Angeles passed a version of the ordinance more than 100 years ago—long before the emergence of parking-meter motels and, indeed, before common folk had motor vehicles. Throughout, the ordinance has required hotels to make the registers available for police inspection. These requirements went unchallenged for over a century until Plaintiffs, a

group of motel owners and operators, sued in 2003. Plaintiffs (Respondents, here) do not dispute that the City may constitutionally require them to record the information and maintain the register. Nor do they press an argument that the ordinance has been unconstitutionally applied to them in any particular case. Instead, Plaintiffs challenge § 41.49 only on its face, contending that the provision that permits the police to inspect registers without a warrant violates the Fourth Amendment.

The Ninth Circuit sustained the facial challenge, gutting § 41.49 of the one attribute that makes it such an effective deterrent: the element of surprise that ensures that hotel owners always collect the relevant information and that puts criminals and their customers in fear of detection. In so doing, the Ninth Circuit erred both procedurally and on the merits.

Procedurally, a facial challenge is not the proper vehicle for assessing the reasonableness of searches authorized by § 41.49 under the Fourth Amendment. The Ninth Circuit had no particular search before it, no police implementing policy, and no concrete facts. So it made a series of assumptions about searches conducted under § 41.49, and then attempted to apply the law to its single hypothetical factual scenario. In so doing, it never even considered all the applications and factual scenarios that would entail different analyses and could yield different outcomes.

On the merits, § 41.49 is a reasonable administrative search regime in a closely regulated

business under the framework established in *New York v. Burger*, 482 U.S. 691 (1987). The Ninth Circuit dismissed this argument in a footnote, asserting that "no serious argument can be made" that hotels are pervasively regulated. Petition Appendix ("P.A.") 13 n.2. But they are, and have been for centuries. Section 41.49 should be upheld on the basis of this established exception to the warrant requirement alone. In any event, even without this exception, the inspections authorized by § 41.49 are reasonable. The City's interests in enforcing hotels' obligations to collect the information and in deterring crime outweigh any minimal intrusion upon the individual privacy of hotel owners with respect to basic guest information they concede they can legally be required to collect on the City's behalf.

The judgment should be reversed.

STATEMENT OF THE CASE

Los Angeles Law Has Long Required Hotels To Show Registers To Police On Request

Since the Middle Ages, innkeepers have kept registers in which visitors inscribed their names. *See* W.C. Firebaugh, *The Inns of the Middle Ages* 124-25 (1924). The tradition carried over to America, where hotel registers were so ubiquitous, and so openly reviewed, that scouring the register became "one of America's most popular indoor sports." Jefferson Williamson, *The American Hotel: An Anecdotal History* 181 (1930). Los Angeles codified the age-old practice into law. Since 1899,

Los Angeles has consistently required hotels to record information about their guests, and to make the guest registers available for inspection. That version of the ordinance required any "lodging house, rooming house or hotel" operator to keep a register inscribed with the name, room number and registration date of "all guests, roomers or lodgers." L.A., Cal., Penal Ordinances § 995 (1899) (recodified at LAMC § 47.01 (1936), repealed by L.A., Cal., Ordinance 177966 (Oct. 6, 2006)). The ordinance commanded that the register "shall be kept in a conspicuous place [in the hotel], and shall at all times be open to inspection by the lodgers, roomers or guests ... and to the Chief of Police or any regular policeman or police detective of said City of Los Angeles." *Id.* A violation of the ordinance was a misdemeanor, punishable by a $100 fine and 50 days in jail. *Id.* § 997. The City Council amped up the penalties to a fine of up to $500 and up to six months' imprisonment in 1936. LAMC § 11.00(m) (1936).

In 1964, the City Council added § 41.49, which is the subject of this case. Section 41.49 required motel operators to record the name and "address of each guest," and, if the guest travelled by car, the vehicle's make, type, year of registration, and license plate. Section 41.49 also required that the register be "at all times ... open for inspection to all police officers." LAMC § 41.49 (1964).

The next four decades saw the development of parking-meter motels that catered to the lowest end of the market. *See* Karin Schmerler, Center for Problem-Oriented Policing, *Disorder at Budget Motels* 4-5 (2005). Criminals of all sorts flocked to low-

budget motels in high-crime areas. *Id.* at 1-10. They could pay as little as $15 for an hour of illicit activity in privacy. JA 216-17. The sorts of establishments that rent rooms by the hour often know that hourly guests are up to nothing good in those motel rooms. But they happily take the cash and whisk the guests to their rooms without filling out the register. *See* Schmerler, *supra*, at 5 & cmt. 2 (describing how motels that are "financially strained" are "unlikely to have the will or resources to stop" crime).

In 2006, the Los Angeles City Council amended § 41.49 to address patterns that were prevalent at these parking-meter motels and to consolidate regulation of all lodging businesses: motels, hotels, inns, etc., all in one provision (and, relatedly, repealed LAMC § 47.01 as largely redundant). Section 41.49 covers any hotel, inn, hostelry, tourist home, motel, lodging house or motel rooming house (which, for convenience, we refer to generically as "hotels"). Under that provision, hotels must record and maintain the following basic information about their guests: name; address; make, model, and license plate number of the guest's vehicle "if the vehicle will be parked on hotel premises"; date and time of the guest's arrival and scheduled departure; room number; "rate charged"; and "method of payment for the room" (cash, check or credit card). LAMC § 41.49(2)(a). Section 41.49 requires more information from guests who exhibit behaviors that are particularly prevalent among criminals: paying for a room in cash, "walk[ing] in" without prior reservation, or renting a room by the hour or "for fewer than 12 hours." *Id.* § 41.49(4). For those guests, the register must also include the number and expiration

date of an identification document presented by the guest at time of check-in. *Id.*

Section 41.49 allows the hotel owner to maintain the required records in a book (permanently bound and sequentially numbered), on cards (numbered consecutively and used in sequence), or electronically (so long as it is printable). *Id.* § 41.49(3)(c). The owner must store the records in the hotel's "guest reception or guest check-in area or in an office adjacent to that area" and maintain them for 90 days. *Id.* § 41.49(3)(a). The ordinance no longer requires that the hotel keep those records open for inspection by all lodgers and guests.

Plaintiffs concede that all these requirements are permissible. They challenge a provision that has been in effect in one form or another since 1899: The requirement that the register "shall be made available to any officer of the Los Angeles Police Department for inspection." *Id.* The ordinance further provides: "Whenever possible, the inspection shall be conducted at a time and in a manner that minimizes any interference with the operation of the business." *Id.*

The City Council declared that the purpose of § 41.49 is to "discourag[e] the use of hotel and motel rooms for illegal activities, particularly prostitution and narcotics offenses." L.A., Cal., Ordinance 177966 (Oct. 6, 2006). The City Council recognized that "persons who rent rooms for illegal purposes generally pay for their rooms with cash, ... [and] do not have advance reservations." *Id.* They also prefer to maintain anonymity. *Id.* Therefore, the Council concluded that requiring hotel guests to provide

identification "will preserve the rights of consumers to use hotels and motels for legitimate purposes while discouraging the use of hotel and motel rooms for illegal activities, particularly prostitution and narcotics offenses." *Id.* The Council further explained that "requiring certain minimum information to be maintained in hotel and motel registers and inspection of hotel and motel registers by the police department is a significant factor in reducing crime in hotels and motels." *Id.*

Hotel Owners Bring A Facial Challenge, Which The District Court Rejects

In 2003, Plaintiffs—a group of motel owners and operators along with a lodging association—sued the City in three consolidated cases challenging the constitutionality of § 41.49. The operative complaint asserted that § 41.49 violated the Fourth Amendment, both on its face and as applied. J.A. 186-87. By stipulation, however, Plaintiffs dropped their as-applied challenge, for reasons not explained in the record. The stipulation, which the district court adopted as an order, stated that "the sole issue in the consolidated action is a facial constitutional challenge to LAMC section 41.49 under the Fourth Amendment." J.A. 195. The parties also stipulated that "[p]laintiffs have been subject and continue to be subject to searches and seizures of their motel registration records by the [LAPD] without consent or warrant pursuant to ... section 41.49." J.A. 194-95.

Although there were no disputed questions of fact, the district court held what it termed a "bench

trial." Plaintiffs offered no witnesses and introduced no evidence. The entire proceeding lasted 24 minutes and was limited to oral argument on the law. The only two exhibits offered were copies of the relevant ordinance provisions. J.A. 227-28.

The district court held that § 41.49 was not facially unconstitutional. Specifically, it concluded that hotel owners have no "reasonable expectation of privacy in [these] registers created pursuant to a municipal mandate." P.A. 56. The court rejected Plaintiffs' argument "that the registers are business records that they may use for other purposes," noting that "it does not appear that they are prevented from maintaining a separate set of documents containing the same or similar information in another location not subject to inspection." *Id.* The court explained that § 41.49 "can be reasonably interpreted as a measured ordinance meant to discourage and fight crime in hotels and motels" and that Plaintiffs had not "met the high burden of showing that § 41.49 cannot be valid under any circumstances." P.A. 57. Thus, the court concluded that § 41.49 "is not unconstitutional on its face." *Id.*

The City had extensively briefed its argument that § 41.49 authorizes reasonable administrative inspections under the framework set forth in *New York v. Burger*, 482 U.S. 691 (1987). J.A. 203-13. The court found it unnecessary to decide that question. P.A. 55.

A Ninth Circuit Panel Affirms, But The En Banc Court Reverses

A panel of the Ninth Circuit affirmed. The panel explained that Plaintiffs "have provided no evidence or other basis for us to conclude that they have an objectively reasonable expectation of privacy in the information covered by this ordinance, let alone that all hotel operators do." P.A. 43. Further, the panel noted that Plaintiffs had not "demonstrated that the inspection of guest registers authorized by the ordinance is an unreasonable intrusion." P.A. 46. Because Plaintiffs "cannot 'establish that no set of circumstances exist under which the Act would be valid,'" P.A. 43 (quoting *United States v. Salerno*, 481 U.S. 739, 745 (1987)), the panel held that they "cannot meet the standard for a successful facial challenge." P.A. 43. Like the district court, the panel found it unnecessary to decide whether the ordinance could also be justified as a "warrantless administrative search under *Burger*." P.A. 45.

A divided en banc panel (7-4) reversed. Because it lacked a factual record, the Ninth Circuit first assumed one hypothetical circumstance that it thought "§ 41.49 appears to contemplate," "[a]s a general rule." P.A. 10-11. In the Ninth Circuit's hypothetical, the LAPD would enter a hotel that stored its register behind the desk "in the 'guest reception or guest check-in area,'" P.A. 11, "demand to inspect [the] hotel's guest records" in real time, P.A. 12, and then "rifle through the records" right in the hotel lobby, P.A. 9.

The Ninth Circuit then ruled that § 41.49 was invalid because it did not meet all of the requirements for an administrative subpoena scheme, P.A. 11-13, even though that was not the basis on which the City defended the statute and neither party argued that § 41.49 authorizes an administrative subpoena. Specifically, the Ninth Circuit held that although a request to inspect a register was "sufficiently limited in scope, relevant in purpose, and specific in directive so that compliance [would] not be unreasonably burdensome," P.A. 11-12 (citation omitted), § 41.49 was "facially invalid under the Fourth Amendment" because it authorized records inspections "without affording an opportunity to obtain judicial review of the reasonableness of the demand prior to suffering penalties for refusing to comply." P.A. 13 (internal quotation marks omitted).

As in the district court, the City's brief before the Ninth Circuit relied heavily on *Burger*, *see* J.A. 249-57. But the Ninth Circuit dismissed *Burger* in a footnote, stating only that "no serious argument can be made that the hotel industry has been subjected to the kind of pervasive regulation that would qualify it for treatment under the *Burger* line of cases." P.A. 13. Likewise, the Ninth Circuit refused to analyze the reasonableness of searches authorized by § 41.49, holding that that "balance has already been struck." P.A. 9.

Four judges dissented in two separate opinions. Judge Tallman concluded that the case could not be resolved by facial challenge, as the Fourth Amendment "has always prohibited specific government conduct—'unreasonable searches and seizures'—not

legislation that could potentially permit such conduct." P.A. 15. As Judge Tallman explained, "[i]t is for this reason that the Supreme Court has held that '[t]he constitutional validity of a warrantless search is pre-eminently the sort of question which can only be decided in the concrete factual context of the individual case.'" *Id.* (quoting *Sibron v. New York*, 392 U.S. 40, 59 (1968). He therefore would have "decline[d] the Patels' invitation" "to assume the exercise of analyzing *all* potential searches that *might be* conducted pursuant to the ordinance in order to declare it deficient," "because the Supreme Court has told us to avoid the exercise altogether." P.A. 15-16 (emphasis in original).

Judge Clifton concluded that even if a facial challenge could be brought, "[t]he absence of judicial review establishes only that the ordinance might not qualify for the recognized exception for administrative subpoenas" but it does not show that a search pursuant § 41.49 would be unreasonable in all circumstances. P.A. 27-28. He criticized the majority opinion for failing "to establish that a search of records under the ordinance would be unreasonable, the ultimate standard imposed under the Fourth Amendment. Instead, to the extent that it deals with the issue at all, it simply accepts Plaintiffs' assertion to that effect, supported by no evidence whatsoever." P.A. 25. "[B]ecause Plaintiffs presented no evidence about the treatment of guest registry information," one could not "simply assume that hotels in general expect information contained in their guest registers to be private." P.A. 32. He therefore would have affirmed the district court's judgment. P.A. 25-34.

SUMMARY OF THE ARGUMENT

The City can prevail against Plaintiffs' facial Fourth Amendment challenge on three independent grounds—one procedural and two on the merits.

I. Procedurally, a facial challenge is not the appropriate vehicle for resolving this case. Instead of considering all the circumstances under which an officer might invoke § 41.49 to inspect a hotel register, the Ninth Circuit erroneously assumed one hypothetical set of facts that it thought "§ 41.49 appears to contemplate," "[a]s a general rule." P.A. 10-11. But an inspection under § 41.49 could entail a host of different fact-bound scenarios.

The Ninth Circuit's approach runs headlong into the principle that facial challenges to statutes are "disfavored." Abstract facial challenges like this strip a court of the "basic building blocks of constitutional adjudication," *Gonzales v. Carhart*, 550 U.S. 124, 168 (2007)—*i.e.*, factual context and real world application of the law. Moreover, a law passed by the democratically elected representatives of the people deserves the highest respect of the judiciary. The Ninth Circuit's facial ruling means the City is not permitted even to *consider* ways to adapt its approach to the infirmities the court identified.

These serious concerns are particularly pronounced when seeking to strike a law under the Fourth Amendment as authorizing unreasonable searches, which is why this Court has held that "[t]he constitutional validity of a warrantless search is pre-eminently the sort of question which can only

be decided in the concrete factual context of the individual case." *Sibron*, 392 U.S. at 59.

The touchstone of any Fourth Amendment analysis is reasonableness and that inquiry turns on the circumstances surrounding the search as well as the nature of the search itself. Assessing the general reasonableness of the administrative searches contemplated by § 41.49 thus requires weighing the degree to which the searches intrude upon an individual's privacy against the degree to which the searches are necessary to promote legitimate governmental interests. That cannot be done in a factual vacuum.

Notably, this Court has never invalidated a statute as authorizing unreasonable searches or seizures based on a bare Fourth Amendment challenge, like this one, without any factual record and without any challenge to the law's implementation in a concrete setting. It has, however, rejected challenges to statutes establishing reasonable administrative search regimes in closely regulated businesses under *New York v. Burger*, 482 U.S. 691 (1987).

II. A. Section 41.49 constitutes a reasonable administrative inspection scheme in a closely regulated industry under the framework established in *Burger*. The City of Los Angeles has required hotel owners to record certain information about their guests, and to make their registers available for police inspection, since 1899, far longer than the eight-year-old inspection scheme at issue in *Burger*. Inns have been regulated since medieval England, and close regulation continued in the colonies. Today,

there are more than 100 ordinances and statutes similar to § 41.49 in effect across the country.

Los Angeles has a substantial interest in ensuring that hotels do not become havens for crime. Warrantless inspections of hotel registers are necessary to further this important interest. As the City Council explained, because criminals prefer to remain anonymous, requiring hotels to record and maintain basic information about their guests, and make that information available for police inspection, deters criminal activity.

Section 41.49 is an adequate substitute for a warrant. By explicitly requiring hotel owners to maintain certain records and to make the required records available for police inspection, it advises hotel owners that inspections are conducted pursuant to law and are not discretionary acts of law enforcement.

Section 41.49 is also sufficiently limited in time, place, and scope. The only item police officers are permitted to inspect is a register—a single bound book, stack of cards, or electronic document. And because the records must be maintained in the "guest check-in area or in an office adjacent to that area," LAMC § 41.49(3)(a), it is entirely up to the hotel operator where the officer reviews the register. And "[w]henever possible" the inspection must be conducted "at a time ... that minimizes any interference with the operation of the business." *Id.*

B. Even if the established exception to the warrant requirement under *Burger* does not apply, § 41.49 still must be sustained because the applica-

tion that the Ninth Circuit hypothesized is reasonable.

The application of § 41.49 envisioned by the Ninth Circuit is reasonable because warrantless inspections of inns were commonplace at the time of the nation's founding. In addition, the individual privacy concerns pale in comparison to the City's legitimate interest in deterring prostitutes, drug dealers, and other serious criminals from committing crimes in hotels. Hotels have only a limited privacy interest in their required registers. Guest registers were open for guest inspection for hundreds of years, including by law in Los Angeles from 1899 to 2006. Moreover, a register of guests' names, addresses, and license plate numbers is not highly personal information about the hotel. The record inspections contemplated by § 41.49 are also particularly unobtrusive as the police need never step foot into the hotel's private places and are authorized to look only at the register itself.

Expanding the focus beyond the hypothetical situation the Ninth Circuit considered, this Court cannot strike § 41.49 statute on its face unless "no set of circumstances exists under which the Act would be valid." *Salerno*, 481 U.S. at 745. This Court could affirm simply by concluding that some of the other scenarios discussed below are plainly constitutional, without even addressing the constitutionality of the Ninth Circuit's hypothetical.

ARGUMENT

Plaintiffs brought a Fourth Amendment challenge arguing that § 41.49 must be struck on its face.

As relevant here, the City defends on three bases—a procedural and two on the merits of the Fourth Amendment claim. The procedural (or, more accurately, prudential) defense is that it was impermissible to decide the reasonableness of searches conducted under § 41.49 on the face of the ordinance. The merits defenses are: (1) that § 41.49 is valid as an ordinance that authorizes a reasonable administrative search regime in a closely regulated business under the framework established in *New York v. Burger*, 482 U.S. 691 (1987); and (2) that the searches conducted pursuant to § 41.49 are reasonable when the City's interests are balanced against the intrusion on hotel owners' privacy (which, for simplicity, we refer to as "reasonableness balancing").

The Ninth Circuit blew past the procedural issue without a word, rejected the *Burger* defense in a two-sentence footnote, and considered the reasonableness balancing irrelevant. The court was triply wrong and the City can prevail on any of these three grounds. First, a facial challenge cannot be used to strike § 41.49 as a violation of the Fourth Amendment because facial challenges are highly disfavored, and Fourth Amendment challenges that depend on balancing considerations of reasonableness in a variety of possible factual scenarios and applications are especially inappropriate. This Court could reverse on that basis alone and never reach either merits issue.

Alternatively, this Court is free to reverse the Ninth Circuit based on *Burger*. *Burger* does not depend on any factual record or specific application, but on the history of regulation, the governmental

interest, and the ordinance's wording. Section 41.49 satisfies all the *Burger* criteria.

Finally, even if this Court concludes that *Burger* does not apply and that it is permissible to conduct the reasonableness balancing on the face of the ordinance, this Court should reverse. The search conducted pursuant to § 41.49 that the Ninth Circuit hypothesized is reasonable under the Fourth Amendment.

I. A FACIAL CHALLENGE CANNOT BE USED TO STRIKE § 41.49 AS A VIOLATION OF THE FOURTH AMENDMENT ON REASONABLENESS GROUNDS.

In striking § 41.49 on its face, the Ninth Circuit offered no response to the four-judge dissent arguing at length that this "facial challenge leaves us with insufficient facts regarding the unconstitutional conduct [Plaintiffs] allege has occurred," and that "[t]he majority's decision to nonetheless entertain the facial challenge eschews Supreme Court guidance to the contrary." P.A. 17. The dissent is correct. There are numerous factual variables that are material to the reasonableness balancing of the searches that § 41.49 authorizes. § I.A. This Court has explained that facial adjudication of fact-bound issues is disfavored in general and is particularly ill-suited to Fourth Amendment reasonableness balancing—and this case is no exception. § I.B.

A. The Ninth Circuit Incorrectly Assumed One Hypothetical Application Of § 41.49.

Instead of considering all the circumstances under which an officer might invoke § 41.49 to inspect a hotel register, the Ninth Circuit assumed one hypothetical set of facts that it thought "§ 41.49 appears to contemplate," "[a]s a general rule." P.A. 10-11. In the Ninth Circuit's hypothetical, the LAPD would enter a hotel that stored its register behind the desk "in the 'guest reception or guest check-in area,'" P.A. 11, "demand to inspect [the] hotel's guest records" in real time, P.A. 12, and then "rifl[e] through the records" right in the hotel lobby, P.A. 9.

For reasons we explain in § II, the hypothetical search the Ninth Circuit singled out for review would be constitutional. But the Ninth Circuit was wrong in assuming one hypothetical factual scenario. An inspection under § 41.49 could entail a host of different fact-bound scenarios, including the following:

1. The hotel leaves the required register open to all guests (as all Los Angeles hotels were legally required to do for more than 100 years) and does not consider it to be at all private.

2. The City requires any hotel that uses an electronic register to enter the information into a City database in real time over the Internet. The police officer inspects the register online from his laptop.

3. The City seeks to inspect on command only a redacted version of the register that reveals no customer names and examines only the number of entries to verify in real time that the hotel is maintaining the register and that it roughly corresponds to the number of vehicles in the lot.

4. Confronted with an exigency (*e.g.*, an amber alert or a 911 call from the hotel), an officer asks to see the register. The hotel owner keeps the register on a password-protected computer and refuses. The officer invokes § 41.49 to threaten imprisonment and a $1,000 fine to compel the owner to enter his password and allow the officer to view the register.

5. The police have probable cause to believe that a hotel register contains evidence of an ongoing crime and secure a warrant. The hotel owner, however, hides the register. Instead of tearing the hotel apart, an officer threatens the owner with jail time if he refuses to turn over the register.

The Ninth Circuit believed that the search it hypothesized gave the City "the benefit of the doubt at each turn." P.A. 10-11. But these scenarios demonstrate otherwise. Each represents either less of an intrusion on privacy or a different state interest, or both.

B. Facial Challenges Are Disfavored Generally And Are Particularly Ill-Suited In This Fourth Amendment Context.

In light of the number and diversity of the factual variables and scenarios, the Ninth Circuit erred in finding § 41.49 unconstitutional on its face.

1. The Ninth Circuit's approach runs headlong into the principle that facial challenges to statutes are "disfavored," *Wash. State Grange v. Wash. State Republican Party*, 552 U.S. 442, 450 (2008), because they ask a court to "pass on the validity of a law wholesale," irrespective of its enforcement or application, *Sabri v. United States*, 541 U.S. 600, 609 (2004). In indulging a hypothetical application that "§ 41.49 appears to contemplate," "[a]s a general rule," P.A. 10-11, the Ninth Circuit presented a classic illustration of why abstract facial challenges are disfavored.

That inquiry strips a court of the "basic building blocks of constitutional adjudication," *Carhart*, 550 U.S. at 168—*i.e.*, factual context and real world application of the law. The Ninth Circuit's decision to invoke a hypothetical was a textbook case of how "[c]laims of facial invalidity often rest on speculation," which "raise[s] the risk of 'premature interpretation of statutes on the basis of factually barebones records.'" *Wash. State Grange*, 552 U.S. at 450 (quoting *Sabri*, 541 U.S. at 609). It is relevant to the reasonableness balancing of any particular search whether the officer does only what the hotel allows lodgers and guests to do (scenario 1); whether the

hotel operator actually treats the records as private (scenario 1); whether the officer never steps foot on the premises when inspecting the information the hotel is legally obligated to maintain (scenario 2); whether the information inspected reveals guests' names (scenario 3); or whether a warrant or exigency could justify invoking the inspection power to compel compliance (scenarios 4 and 5).

This case also vividly displays how "facial challenges threaten to short circuit the democratic process by preventing laws embodying the will of the people from being implemented in a manner consistent with the Constitution." *Wash. State Grange*, 552 U.S. at 451. Whether enacted by Congress or a city council, the "delicate power" of pronouncing such legislative enactments "unconstitutional is not to be exercised with reference to hypothetical cases thus imagined." *United States v. Raines*, 362 U.S. 17, 22 (1960). The antidemocratic consequences of the Ninth Circuit's approach are especially pronounced because the court deprived the City of any opportunity to adapt to the Ninth Circuit's constitutional ruling. The Ninth Circuit's facial ruling means the City is not permitted even to *consider* other ways to require hotel owners to "ma[k]e available" the register "for inspection," short of a warrant, nor to invoke this ordinance no matter how well it "minimiz[es] any interference with the operation of the business." LAMC § 41.49(3)(a).

2. These serious concerns are particularly pronounced when a lawsuit seeks to strike a law under the Fourth Amendment as authorizing unreasonable searches. The touchstone of any Fourth Amendment

analysis is reasonableness. *Vernonia Sch. Dist. 47J v. Acton*, 515 U.S. 646, 652 (1995). "What is reasonable, of course, depends on all of the circumstances surrounding the search or seizure and the nature of the search or seizure itself." *Skinner v. Ry. Labor Execs.' Ass'n*, 489 U.S. 602, 619 (1989) (internal quotation marks omitted). Reasonableness requires balancing the search's "intrusion on the individual's Fourth Amendment interests against its promotion of legitimate governmental interests." *Id.* Consequently, Fourth Amendment outcomes frequently turn on such factual details as whether equipment is moved "even a few inches" to expose hidden serial numbers, *Arizona v. Hicks*, 480 U.S. 321, 325 (1987), or whether officers wait "15 to 20 seconds" before entry after knocking on a door, *United States v. Banks*, 540 U.S. 31, 39 (2003). Such detail is wholly absent when a court reviews a statute in a factual vacuum, as the Ninth Circuit did here.

That is why this Court, in *Sibron v. New York*, held that "[t]he constitutional validity of a warrantless search is pre-eminently the sort of question which can only be decided in the concrete factual context of the individual case." 392 U.S. at 59. There, two individuals had been arrested and convicted following stops pursuant to New York's stop-and-frisk statute. The statute "purport[ed] to authorize police officers to 'stop' people, 'demand' explanations of them and 'search (them) for dangerous weapon(s).'" *Id.* at 60 (quoting N.Y. Crim. Proc. Law § 180-a). They persuaded this Court that the specific searches were unconstitutional. But this Court refused to entertain a facial challenge to the statute.

In words that could have been written for this case, this Court explained it would be wrong to "pronounce judgment on the words of the statute" and its "abstract validity." *Id.* at 60 n.20, 62. The Court confined its "review instead to the reasonableness of the searches and seizures" actually before the Court. *Id.* at 62. *Sibron* stressed the conceptual and practical difficulty of seeking to strike down a statutory search power as "unreasonable" under the Fourth Amendment without knowing how the statute was to be interpreted and applied. *See id* at 59-62. "The question in this Court upon review of a state-approved search or seizure is not whether the search (or seizure) was authorized by state law. The question is rather whether the search was reasonable under the Fourth Amendment." *Id.* at 61 (internal quotation marks omitted).

So, too, here. Assessing the general reasonableness of the searches contemplated by § 41.49 requires weighing the degree to which the searches "intrude[] upon an individual's privacy," against the degree to which the searches are "needed for the promotion of legitimate governmental interests." *Riley v. California*, 134 S. Ct. 2473, 2484 (2014). Without facts, that is an "abstract and unproductive exercise." *Sibron*, 392 U.S. at 59.

3. In some limited contexts, the dangers of facial challenges are outweighed by the practical consideration that a facial challenge is necessary to vindicate a constitutional right. The classic example is the First Amendment setting, where this Court has sanctioned facial challenges "when statutes threaten [to chill speech] to a significant degree." *City of*

Lakewood v. Plain Dealer Publ'g Co., 486 U.S. 750, 759 (1988). Facial challenges in that context are necessary because the very existence of the offending statute *itself* leads to self-censorship. *See id.* at 757-58 ("Self-censorship is immune to an 'as applied' challenge" and "only a facial challenge can effectively test the statute for these standards.").

No such practical considerations are at play in determining the general reasonableness of searches conducted pursuant to an ordinance. To bring any Fourth Amendment challenge, a plaintiff must demonstrate "that he has sustained or is immediately in danger of sustaining some direct injury as the result of the challenged official conduct and the injury or threat of injury must be both real and immediate, not conjectural or hypothetical." *City of Los Angeles v. Lyons*, 461 U.S. 95, 101-02 (1983) (internal quotation marks omitted); *see Clapper v. Amnesty Int'l USA*, 133 S. Ct. 1138, 1150 (2013) (plaintiff must show "injury based on potential future surveillance [that] is certainly impending or is fairly traceable to" the statute or practice challenged). Accordingly, in the Fourth Amendment context, the mere existence of a statute or announced practice cannot satisfy the standing requirement or establish a case or controversy. A plaintiff pursuing a Fourth Amendment challenge must allege how the implementation of the law has or will likely cause him injury. Thus, a plaintiff who satisfies Article III should generally be able to bring an as-applied challenge.

That is certainly the case with § 41.49. Not only could Plaintiffs have filed a suit challenging how the

LAPD was applying § 41.49 to them, but they *did*. For reasons known only to Plaintiffs, they chose to drop their as-applied challenge. Instead, they decided to try to wipe § 41.49 off the books entirely, without regard to how it is being construed and implemented in the real world, without offering the court any factual record, without affording the City an opportunity to adapt to any constitutional ruling by narrowing its interpretation, and without considering all of the possible different fact-bound scenarios in which an inspection could occur. This Court cannot strike § 41.49 on that basis.

4. The text of the Fourth Amendment provides no support for the Ninth Circuit's expansionist approach. Some constitutional provisions directly target legislative enactments, and, accordingly may suggest a more liberal approach to challenging legislative enactments on their face. For example, the First Amendment is directed at "Congress," which "shall make no law ...." U.S. Const. amend. I. Similarly, part of the Fourteenth Amendment is directed at state legislatures, U.S. Const. amend. XIV § 1 ("No state shall make ... any law ..."). Thus, the texts of those provisions may provide some extra license to engage in a facial challenge to the enactment of a law.

The Fourth Amendment's text points in the opposite direction. *See* Nicholas Quinn Rosenkranz, *The Subjects of the Constitution*, 62 Stan. L. Rev. 1209, 1239-41 (2010). The text is not directed at any legislature or any law. The first clause prohibits "unreasonable searches and seizures"—which are conducted by the executive branch. U.S. Const.

amend. IV; *see United States v. U.S. Dist. Court*, 407 U.S. 297, 316-317 (1972). Legislatures do not conduct searches and seizures. As Judge Tallman explained, the Fourth Amendment "prohibit[s] specific government conduct—'unreasonable searches and seizures'—not legislation that could potentially permit such conduct." P.A. 15.

5. Notably, this Court has never invalidated a statute as authorizing unreasonable searches or seizures based on a bare Fourth Amendment challenge, like this one, without any factual record and without any challenge to the law's implementation in a concrete setting. *See* Cong. Research Serv., *The Constitution of the United States of America: Analysis and Interpretation*, S. Doc. No. 112-9, at 2287-536 (Centennial ed., Interim ed. 2014) (listing all statutes that this Court has held unconstitutional through July 1, 2014).

To be sure, in the course of finding a search unconstitutional in an as-applied challenge, this Court has sometimes imprecisely stated that "statutes" authorizing the searches "are not consistent with the Fourth Amendment." *Payton v. New York*, 445 U.S. 573, 576 (1980) (reviewing motions to suppress evidence secured under statutory authorization and making that statement even though the only remedy the defendants received was the suppression of evidence in their particular cases). But that does not change the fact that the Court generally does not strike statutes on their face under the Fourth Amendment, much less strike them in a factual vacuum.

In contrast, courts are capable of making some Fourth Amendment determinations without any consideration of case-specific facts. This case involves one such determination: A warrantless search is reasonable when performed pursuant to a statute qualifying as a reasonable administrative search regime in a closely regulated business, so long as (1) a substantial government interest informs the regulatory scheme; (2) warrantless inspections are necessary to further the government interest; and (3) the statute on its face provides a constitutionally adequate substitute for a warrant. *See Burger*, 482 U.S. at 702. These determinations are made solely by looking to the language and legislative history of the statute and the history of regulation of the industry, not by considering the facts of any particular search.

This Court is free to conduct that legal analysis here. Because § 41.49 meets all of the *Burger* requirements (for the reasons we discuss next in § II.A.), the Ninth Circuit must be reversed. But whether or not § 41.49 meets the *Burger* requirements, this Court cannot affirm without concluding both that a facial challenge is permissible (contrary to the principles discussed to this point) *and* that the searches the Ninth Circuit hypothesized are unreasonable (contrary to § II.B.).

II. SECTION 41.49 IS NOT FACIALLY UNCONSTITUTIONAL.

Plaintiffs have failed to sustain their "heavy burden," *Crawford v. Marion Cnty. Election Bd.*, 553 U.S. 181, 200 (2008), of proving that "no set of cir-

cumstances exists under which the [ordinance] would be valid," *Salerno*, 481 U.S. at 745. The Fourth Amendment does not prohibit all searches, but only "unreasonable searches," U.S. Const. amend. IV; *see Maryland v. King*, 133 S. Ct. 1958, 1968-69 (2013). Here, § 41.49 does not violate the Fourth Amendment for three independent reasons.

First, § 41.49 is a reasonable administrative search regime in a closely regulated business under the framework established in *Burger*. § II.A. Second, the hypothetical search the court of appeals considered—where police officers enter the hotel and request to see records stored behind the desk—is reasonable, because the governmental interests justifying § 41.49 outweigh any minimal intrusion upon individual privacy. § II.B. Third, regardless of the constitutionality of the application the Ninth Circuit hypothesized, this facial challenge must fail, because there are multiple substantial applications of § 41.49 that are constitutional. § II.C.

A. Section 41.49 Constitutes A Reasonable Administrative Inspection Scheme In A Closely Regulated Industry.

This Court has repeatedly upheld "legislative schemes authorizing warrantless administrative searches of commercial property." *Donovan v. Dewey*, 452 U.S. 594, 598 (1981). A warrant is not required where the legislature "has reasonably determined that warrantless searches are necessary to further a regulatory scheme" and when the "regulatory presence is sufficiently comprehensive and defined that the owner of commercial property cannot

help but be aware that his property will be subject to periodic inspections undertaken for specific purposes." *Id.* at 600. The idea is that owners of "commercial premises" in "closely regulated" industries have "reduced expectation[s] of privacy," and the "government interests in regulating" such business are "concomitantly heightened." *Burger*, 482 U.S. at 702 (citation omitted).

This Court established the framework for invoking this exception to the warrant requirement in *New York v. Burger*. *Burger* considered a challenge to a state statute bearing a striking resemblance to § 41.49. It imposed fairly modest burdens on vehicle dismantlers, along with a record-keeping requirement. *Id.* at 704-05. Most relevant here, the statute provided: "Upon request ... of any police officer and during his regular and usual business hours, a vehicle dismantler shall produce such records and permit said agent or police officer to examine them and any vehicles or parts of vehicles which are subject to the record keeping requirements of this section ...." *Id.* at 694 n.1. This Court held that the inspection scheme fell within the "established exception to the warrant requirement for administrative inspections in closely regulated businesses." *Id.* at 703 (internal quotation marks omitted).

This Court explained that a warrantless inspection regime is reasonable where the business operates in a "pervasively" or "closely" regulated field and satisfies three criteria: (1) "there must be a 'substantial' government interest that informs the regulatory scheme pursuant to which the inspection is made"; (2) "warrantless inspections must be 'necessary to further [the] regulatory scheme'"; and (3)

the ordinance itself must provide a "constitutionally adequate substitute for a warrant," both in terms of "certainty" and "regularity" of application. *Id.* at 702-03 (quoting *Dewey*, 452 U.S. at 601-03). We address the "closely regulated" threshold and the three *Burger* criteria in turn.

1. Hotels are closely regulated in Los Angeles and nationwide.

The Ninth Circuit's two-sentence footnote rejecting this exception was premised entirely on the view that "no serious argument can be made that the hotel industry has been subjected to the kind of pervasive regulation that would qualify it for treatment under the *Burger* line of cases." P.A. 13 n.2. It was wrong.

a. An industry is "closely" regulated if "the 'regulatory presence is sufficiently comprehensive and defined that the owner of commercial property cannot help but be aware that his property will be subject to periodic inspections undertaken for specific purposes.'" *Burger*, 482 U.S. at 705 n.16 (quoting *Dewey*, 452 U.S. at 600). In *Burger*, this Court held that vehicle dismantlers satisfied the definition mainly because they endured certain fairly routine burdens: They had to obtain a license and registration number from the Department of Motor Vehicles; display the registration number prominently at the business, on business records, and on all vehicles and parts; maintain a book recording purchases and sales of vehicles and vehicle parts; and make such books and vehicles available for police inspection. 482 U.S. at 704-05 & n.15. Vehicle dismantlers were subjected to criminal penalties, license revocation,

and civil fines for any failure to comply. *Id.* at 705. These few attributes sufficed to put the owner on notice "that his property will be subject to periodic inspections undertaken for specific purposes." *Id.* at 705 n.16 (quoting *Dewey*, 452 U.S. at 600).

The regulatory regime for hotels shares those same attributes—and more: Section 41.49 similarly requires hotel owners to record certain information and make the required records available for police inspection. Hotels, too, are licensed—in fact subject to licensing from multiple agencies: A hotel owner may not "engage in the business of a hotel" in Los Angeles, unless he obtains an operational permit from the Fire Marshall. LAMC § 57.105.6.17. He also must register the hotel with the Director of Finance and obtain a "Transient Occupancy Registration Certificate." *Id.* § 21.7.6. That Registration Certificate, too, must be posted in a conspicuous place on hotel premises at all times. *Id.* Violating § 41.49, too, carries penalties. And, most important of all, as in *Burger*, § 41.49 itself informs a hotel owner that the required records "will be subject to periodic inspections undertaken for specific purposes." 482 U.S. at 705 n.16 (quoting *Dewey*, 452 U.S. at 600).

Burger observed that both the "number of regulations" and longevity of the regulatory scheme are relevant, though neither is dispositive. 482 U.S. at 705 & n.16 (citing *Dewey*, 452 U.S. at 600). It had to make those points in order to sustain the scheme there, because the regulations were so few (the ones mentioned above) and so new (the inspection provision was only four years old when the statute was

challenged).[1] *Burger* also found it instructive that other states provided for the warrantless inspections of vehicle dismantlers and junkyards. 482 U.S. at 698 n.11, 705.

Los Angeles hotels are subject to far more, and far older, regulations than the vehicle dismantlers in *Burger*. No wonder Plaintiffs conceded that "[t]here does seem to be a pervasive scheme throughout the state statutes regulating the various aspects of the motel industry." J.A. 133.

To start with the extent of the regulation, Los Angeles hotels labor under numerous other state and local regulatory burdens. Some examples suffice:

- A hotel operator may not refuse a guest without just cause. Cal. Penal Code § 365.
- If a guest fails to depart his hotel room by checkout time, a hotel cannot evict the guest without satisfying certain conditions. Cal. Civ. Code § 1865.
- Bed linens must be changed before a new guest occupies the bed. Cal. Code Regs. tit. 25, § 40.
- Hotels must provide guests the option of not having towels and linens laundered daily. LAMC § 121.08(A)(12).

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[1] This Court boosted that limited history by linking it to the 140-year history of regulation of the automobile junkyard's cousins, the second-hand shop and the general junkyard. *Burger*, 482 U.S. at 707.

- Hotels may not provide multi-use cups and ice buckets unless they are thoroughly washed and sanitized after each use and then placed in a protective bag. Single-use cups and ice buckets must be individually wrapped. Cal. Code Regs. tit. 17, § 30852 *et seq.* (authorizing health officials to inspect for compliance).

- Hotels must conspicuously post room rates and may not charge more than the posted rate. Cal. Civ. Code § 1863.

As to duration, for 115 years, Los Angeles has continuously required hotels to record the same types of information about their guests, and to make the registers available for police inspection. *See* Penal Ordinances §§ 995, 997 (1899). And for 106 of those years, hotels were required to leave the registers "open to inspection by ... guests." *Id.* § 997.

In regulating hotels so pervasively, Los Angeles joins a centuries-old tradition. Innkeepers were "tightly regulated" under "fourteenth-century English statutes and case law." Frederick B. Jonassen, *The Law and the Host of the Canterbury Tales*, 43 J. Marshall L. Rev. 51, 53 (2009). The colonies and nascent states continued the regulatory tradition. Three examples illustrate.

Colonial Virginia required innkeepers to obtain a license and regulated their rates, prohibiting them, for example, from charging more than "tenn pounds of tobaccoe for a meales diett." Act VIII of Oct. 1, 1644, *reprinted in* 1 William Waller Hening, *The*

Statutes at Large, Being a Collection of All the Laws of Virginia 287 (2d ed. 1823).[2]

Massachusetts capped the number of inns that could operate, tasking a town selectman in each town with certifying that town's quota. An Act For The Due Regulation Of Licenced Houses (1786), *reprinted in* Acts and Laws of the Commonwealth of Massachusetts 208-09 (1893). And no innkeeper could secure a license without swearing an oath of loyalty to the Commonwealth. *Id.* at 208. Massachusetts also required innkeepers to "furnish[] ... suitable provisions and lodging, for the refreshment and entertainment of strangers and travellers, pasturing and stable room, hay and provender ... for their horses and cattle." *Id.* at 209.

In 1710, Pennsylvania passed an Act "that no public house or inn ... be kept without license." Acts of the General Assembly of Pennsylvania, *reprinted in* 1 Mathew Carey & J. Bioren, *Laws of the Commonwealth of Pennsylvania* 79 (1803). Innkeepers could not secure a license without persuading county and city officials to recommend them to the Lieutenant Governor. *Id.* at 80. They were also required to "keep good entertainment for man and horse"—for example, sufficient food. *Id.* at 81. Similarly, New Jersey's 1797 Act Concerning Inns and Taverns for-

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[2] Georgia similarly directed the "justices of every inferior county court" responsible for innkeeper licensing to fix rates for "liquors, diet, lodgings, provender, stabling and pasturage" and required innkeepers to post the price list. An Act for Regulating Taverns, and Reducing Rates of Tavern License No. 459 (1791), *reprinted in* Robert Watkins & George Watkins, *Digest of the Laws of the State of Georgia* 453-54 (1800).

bade innkeepers to keep disorderly inns or to allow gaming. Act Concerning Inns and Taverns, N.J. Laws Pat. 235 (1797), *reprinted in Laws of the State of New Jersey* 281-82, (1821). It also required them to "use and maintain good order and rule, and find and provide good, wholesome, and sufficient lodging." *Id.* at 282. For good measure, innkeepers were required to have "at least two good feather-beds for guests, with good and sufficient bed-clothes for the same." *Id.* at 283.

The close regulation of hotels—the inns of the modern world—continues to this day (though with less talk about hay and stables). Courts have consistently upheld these regulations because "the keeping of [hotels] is a business so far affecting the public interest," that legislatures may act to ensure "that such houses do not become places for the practice of vice or crime or menaces to the public welfare," *Cutsinger v. Atlanta*, 142 Ga. 555, 565 (1914)—exactly the City Council's purpose here.

c. *Burger* noted that other states also provided for the warrantless inspections of vehicle dismantlers and automobile junkyards. 482 U.S. at 698 n.11, 705. Ordinances like the one at issue here are just as pervasive. We have found more than 100 ordinances and statutes that require hotels to record information about their guests and make the required records available for police inspection.[3]

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[3] *See* P.A. 66-107 (citing 70 laws); *see also* Anaheim, Cal., Code § 7.22.010; Bellevue, Wash., Code § 5.24.010 *et seq.*; Billings, Mont., Code § 7-602; Detroit, Mich., Code § 44-2-12; East Peoria, Ill., Code § 3-15-13; Greensboro, N.C., Code § 13-91; Jersey City, N.J., Code § 254-96; Los Angeles Cnty, Cal.,

2. Section 41.49 meets *Burger*'s other three criteria.

Beyond the requirement that a business be closely regulated, § 41.49 also meets *Burger*'s three additional criteria.

a. Section 41.49 easily meets the first condition: "a substantial government interest that informs the regulatory scheme pursuant to which the inspection is made." *Id.* at 702 (internal quotation marks omitted). The City Council's stated objective was to "discourage the use of hotel and motel rooms for illegal activities, particularly prostitution and narcotics offenses." L.A., Cal., Ordinance 177966 (Oct. 6, 2006). The Ninth Circuit accepted that § 41.49's goal was to "deter drug dealing and prostitution" in hotels. P.A. 10. That is indisputably a substantial interest.

b. The next requirement is that § 41.49's warrantless register inspections must be "necessary to further [the] regulatory scheme." *Burger*, 482 U.S. at 710 (alteration in original). Plaintiffs concede that the City may require them to collect the infor-

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Code § 8.20.010 *et seq.*; Madison, Wis., Code § 23.12; Missoula, Mont., Mun. Code § 5-16-050; Montgomery, Ala., Code § 6-62; N.H. Rev. Stat. Ann. § 353:3; Norfolk, Va., Code § 22-7; Rockford, Ill., Code § 105-436; Sacramento, Cal., Code § 5.76.010 *et seq.*; Spokane, Wash., Mun. Code § 17C.315.150; Stockton, Cal. Mun. Code § 5.44.010 *et seq.*; Tucson, Ariz., Code § 7-441; Tulsa, Okla., Code § 27:1602 *et seq.*; Virginia Beach, Va., Code § 15-5; Wis. Admin. Code DHS § 195.16; Woodbridge, N.J., Revised Gen. Ordinances § 21-1.1 *et seq.* Note that upon close scrutiny the appendix cited above should not have including ordinances for Elizabeth, N.J.; Emeryville and Santa Cruz, Cal.; Hampton, Va.; and Mesa, Ariz.

mation listed in § 41.49. They also agree that they keep these records for the City's benefit. Section 41.49 contemplates no physical intrusion into private places. As the Ninth Circuit pointed out, the only physical intrusion is into the "hotel's papers." P.A. 6.

The City Council concluded that this very limited warrantless record inspection is necessary to further the City's interest in assuring that its hotels do not become havens for crime. Through a century of experience, the Los Angeles City Council—along with the legislatures of scores of states and municipalities—has confirmed that a warrantless inspection scheme of hotel registers is necessary to "discourag[e] the use of hotel and motel rooms for illegal activities, particularly prostitution and narcotics offenses." L.A., Cal., Ordinance 177966 (Oct. 6, 2006). The City Council found that "requiring certain minimum information to be maintained in hotel and motel registers and inspection of hotel and motel registers by the police department is a significant factor in reducing crime in motels and hotels." *Id.* Recognizing that criminals prefer to remain anonymous, the Council concluded that requiring hotels to record and maintain basic information about their guests, and make that information available for police inspection, deters criminal activity in hotels. *Id.*

The only evidence in the record proves that § 41.49 does, indeed, accomplish its goal. Los Angeles Police Department Det. Eric Moore, a nuisance abatement expert and the officer-in-charge of enforcing § 41.49, explained: "Prostitutes and/or criminals are reluctant to provide true identifying information," and are also reluctant to "falsify such in-

formation"—preferring to leave the required registration cards incomplete. J.A. 116. Thus, requiring hotel owners to record § 41.49 information "furthers the City's goal in eradicating prostitution and/or other criminal activities at motels." *Id.*; *see also* P.A. 120-33 (showing 82% increase in criminal activity at a sample of five motels between the six months before § 41.49's suspension and the six months after).

Common sense supports the rationale. Take the example of a parking-meter motel. A dealer, pimp, or john who is required to show ID before renting a room, and watches the clerk record the information for purposes of police inspection, might rethink the risk-reward analysis of using the motel. But the goal of deterring criminal activity is scuttled if the motel does not consistently demand and truthfully record all the required information.

The only way to ensure that our hypothetical parking-meter motel is doing so is to set up a system of frequent, unannounced inspections. If the motel operator knows that an officer can walk in at any moment, inspect the register, and subject him to a criminal prosecution for a violation, he is more likely to comply with the law. When a police officer makes an unannounced register check, she can verify the accuracy of the information by scribbling down the license plates of the cars in the parking lot and then verifying that they match the register information. Even if no officer actually checks the register, the possibility of an unscheduled register inspection makes hotel operators more likely to fulfill their responsibilities. On the other hand, if the police are not permitted to conduct frequent surprise spot checks for record compliance, it is easy for the hotel

operator to get away with omitting names or otherwise cooking the books.

This is the same basis on which this Court has approved warrantless inspections in multiple cases. In *Burger*, for example, this Court found that "a warrant requirement would interfere with the statute's purpose of deterring automobile theft." 482 U.S. at 710. "[F]requent and unannounced inspections are necessary ... if the regulatory scheme aimed at remedying this major social problem is to function at all." *Id.* (internal quotation marks omitted).

This Court took the same approach in *United States v. Biswell*, 406 U.S. 311 (1972), where it approved the scheme under the Gun Control Act of 1968. That statute required all licensed gun dealers to maintain certain records and allow law enforcement agents to descend on their premises—not just to review their records but also to scour their store rooms and warehouses to examine any firearms kept on premises—all without a warrant and without notice. 406 U.S. at 312 n.1. The Court held that inspections could not "assure[] that weapons are distributed through regular channels and in a traceable manner and make[] possible the prevention of sales to undesirable customers and the detection of the origin of particular firearms," if scheduled in advance or conducted only with warrants. *Id.* at 315-16. The Court explained that "the prerequisite of a warrant could easily frustrate inspection." *Id.* at 316; *see also Dewey*, 452 U.S. at 603 (endorsing Congress's determination that "[i]n [light] of the notorious ease with which many safety or health hazards may be concealed if advance warning of inspection is

obtained, a warrant requirement would seriously undercut this Act's objectives"). These cases all stand for the proposition that a warrantless inspection scheme is most essential in cases, like this one, that pose a "high risk of undetectable subterfuge." Wayne R. LaFave, *Search & Seizure: A Treatise on the Fourth Amendment* § 10.1(c) n.69 (5th ed. 2012).

All the alternatives the Ninth Circuit contemplated would defeat the City's purpose. The Ninth Circuit believed that "pre-compliance judicial review" is an "essential procedural safeguard." P.A. 12. Notably, none of the *Burger* criteria contemplates "pre-compliance judicial review," much less makes it "essential"; that was a requirement the court imported from the context of administrative subpoenas, *see Donovan v. Lone Steer, Inc.*, 464 U.S. 408, 414 (1984), which neither party invoked. But § 41.49 does not authorize administrative subpoenas. An administrative subpoena scheme would simply not work in this context because, by definition, such a subpoena would give hotel owners notice and ample time to submit a set of falsified records. It would be a worthless, futile effort to serve the parking-meter motel with an administrative subpoena to produce a month's worth of register information. The owner could scribble down 29 days of false entries and tack on one set of truthful entries for submission day itself, safe in the knowledge that the police could not learn that days one through 29 were false because they could not go back in time to compare the register to cars parked in the lot.

All the more so if the owner challenged the subpoena in court. *See Lone Steer*, 464 U.S. at 415; LaFave, *supra*, § 10.1(d). In that case, the owner

could falsify records for the months or perhaps years it took for the case to wind its way through the court system. Because the register can only be verified contemporaneously, and because violations can be readily concealed without being corrected, the police would be none the wiser.

Similarly, as this Court recognized in *Burger* and *Biswell*, a warrant requirement is misaligned with § 41.49's objectives. In a criminal investigation, a warrant assures that there is probable cause to believe "that contraband or evidence of a crime will be found in a particular place." *Illinois v. Gates*, 462 U.S. 213, 238 (1983). But these inspections are not premised on probable cause that a crime *has* been committed, but on the need to ensure the required records are being properly maintained. So "the protections afforded by a warrant would be negligible." *Burger*, 482 U.S. at 710 (quoting *Biswell*, 406 U.S. at 316)).

This case—and cases like *Burger*, *Biswell*, and *Dewey*—stand in contrast to situations where this Court has found that warrantless inspections were not necessary to carry out the law enforcement purposes. A good example is *See v. City of Seattle*, 387 U.S. 541 (1967). There, this Court disapproved the Seattle Fire Chief's warrantless search of a locked commercial building to "obtain compliance with Seattle's Fire Code." *Id.* at 541. As this Court later observed, that holding was premised on the fact that the "mission of the inspection system was to discover and correct violations of the building code, conditions that were relatively difficult to conceal or to correct in a short time." *Biswell*, 406 U.S. at 316. Therefore, "[p]eriodic inspection sufficed, and inspection

warrants could be required and privacy given a measure of protection with little if any threat to the effectiveness" of the system. *Id.*

This makes perfect sense. It is hard to hide a half ton of garbage sitting on your property, or an emergency door that won't open, or a construction defect that violates code. In fact, most building code violations and fire hazards "cannot readily be concealed without being corrected." Note, *The Fourth Amendment and Housing Inspections*, 77 Yale L.J. 521, 534 (1968). Therefore, if a property owner takes advantage of the time before an announced inspection to correct deficiencies—*e.g.*, to remove the debris or fix the jammed door—the "purposes of the housing code" are actually "advanced rather than thwarted." *Id.*; *see also* LaFave, *supra*, at §§ 10.1(c), 10.1(e). This is presumably why in *Camara v. Municipal Court*, which considered a warrantless inspection of a private dwelling pursuant to the San Francisco Housing code, this Court stated that no party "urged that fire, health, and housing code inspection programs could not achieve their goals within the confines of a reasonable search warrant requirement," and why the Court concluded that the "burden of obtaining a warrant" was not "likely to frustrate the governmental purpose behind the search." 387 U.S. 523, 533 (1967).

c. To qualify as an adequate substitute for a warrant both in terms of "certainty" and "regularity" of application, a regulation "must perform the two basic functions of a warrant": advise the owner that the inspection is being made pursuant to law, and be "carefully limited in time, place, and scope." *Burger*,

482 U.S. at 702-03. Section 41.49 meets both requirements.

Section 41.49 advises hotel owners that the required record inspections are made pursuant to law. In *Burger*, this Court concluded that the statute itself advised vehicle inspectors that inspections were being made pursuant to law because the statute so provided. 482 U.S. at 711. In fact, the Court held that the statute informed the vehicle dismantler "that the inspections to which he is subject do not constitute discretionary acts by a government official but are conducted pursuant to statute," *id.*, even though the statute did not actually spell out how frequently inspections were to occur or how businesses were to be selected for inspection, *id.* at 711 n. 21; *see Biswell*, 406 U.S. at 313 n.1, 316 (statute that did not specify how inspections would be conducted or how individual gun dealers would be chosen for inspection, and permitted inspections of a gun dealer's records and inventory "at all reasonable times," adequately advised dealers that inspections were made pursuant to law).

So, too, here. Section 41.49 explicitly requires hotel owners to maintain certain records and to make the required records "available to any officer of the Los Angeles Police Department for inspection." LAMC § 41.49. Section 41.49 itself, like its predecessors have continuously done since 1899, thus informs the hotel owner that inspections of the required records are made pursuant to law.

Contrast § 41.49's narrow and defined inspection with the nearly limitless local ordinance in *Camara*, which permitted "[a]uthorized employees of the City

departments or City agencies" to enter "any building, structure, or premises in the City to perform any duty imposed upon them by the Municipal Code." 387 U.S. at 526. There, unlike here, "when the inspector demands entry, the occupant has no way of knowing whether enforcement of the municipal code involved requires inspection of his premises, no way of knowing the lawful limits of the inspector's power to search, and no way of knowing whether the inspector himself is acting under proper authorization." *Id.* at 532.

Section § 41.49 is also sufficiently limited in time, place, and scope. As to "scope" and "place," § 41.49 is narrower than any of the statutes this Court has approved. The only item police officers are permitted to inspect is a register—a single bound book, stack of cards, or electronic document. This very limited scope minimizes almost all interference with the hotel's operation. Moreover, the records are not just anywhere in the hotel. The records must be maintained in the "guest check-in area or in an office adjacent to that area." LAMC § 41.49(3)(a). It is thus entirely up to the hotel operator where the officer reviews the register.

This is significantly more limited than the scope and place of permitted inspections in *Burger*, *Biswell*, and *Colonnade Catering Corp. v. United States*, 397 U.S. 72 (1970). The Court in *Burger* approved inspections covering not only the required records, but all of the vehicles and vehicle parts found on the premises. 482 U.S. at 711-12. Similarly, the statutes in *Biswell* and *Colonnade* permitted inspections not only of records, but also of entire premises, including locked "places of storage."

Biswell, 406 U.S. at 313 n.1; *see Colonnade*, 397 U.S. at 74 n.1.

The narrow scope and place of inspections authorized by § 41.49 stands in marked contrast to OSHA's wide-ranging and expansive inspections in *Marshall v. Barlow's, Inc.*, 436 U.S. 307 (1978). OSHA authorized the Secretary of Labor "to enter without delay and at reasonable times any factory, plant, establishment, construction site, or other area, workplace or environment where work is performed by an employee ... and (2) to inspect and investigate ... any such place of employment and all pertinent conditions, structures, machines, apparatus, devices, equipment, and materials therein, and to question privately any such employer, owner, operator, agent, or employee." *Id.* at 309 n.1. Moreover, the statute "fail[ed] to tailor the scope ... of such administrative inspections to the particular health and safety concerns posed by the numerous and varied businesses regulated by the statute." *Dewey*, 452 U.S. at 601.

The time of the inspections is likewise sufficiently cabined by the ordinance. *Burger* held that the New York statute was limited in time because it required a vehicle dismantler to permit inspection only "during [his] regular and usual business hours." 482 U.S. at 711. But limiting required records inspections only to the regular and usual business hours of a hotel would impose no limit at all, as hotels are open 24/7. Instead, § 41.49 requires "[w]henever possible" the inspection be "at a time ... that minimizes any interference with the operation of the business." § 41.49(3)(a). A reasonable officer

would not, for example, choose to examine the records during prime checkout time.

* * *

Thus, this case meets all of the *Burger* criteria: And the same logic that allowed warrantless inspections in *Burger*, is fully applicable here.

B. Searches Conducted Under § 41.49 Are Reasonable.

Even if the established exception to the warrant requirement for administrative inspections in closely regulated industries did not fit § 41.49 perfectly, the searches conducted pursuant to § 41.49 must be sustained because they are reasonable. In determining if a particular search is reasonable, this Court first looks to "precise guidance from the founding era." *Riley*, 134 S. Ct. at 2484. Absent such guidance, the Court weighs the degree to which the search "intrudes upon an individual's privacy," against the degree to which the search is "needed for the promotion of legitimate governmental interests." *Id.* (citation omitted); *see King*, 133 S. Ct. at 1969 (warrantless searches can be reasonable under the Fourth Amendment in a variety of circumstances, including where "faced with ... diminished expectations of privacy, minimal intrusions, or the like").

The Ninth Circuit acknowledged that this reasonableness balancing is "[o]rdinarily" required. P.A. 9. But it declined to perform the requisite balancing, reasoning that "that balance has already been struck" because "the Supreme Court has made clear that, to be reasonable, an administrative rec-

ord-inspection scheme ... must at a minimum afford an opportunity for pre-compliance judicial review." P.A. 9-10.

The Ninth Circuit was incorrect. That element relates to the exception to the warrant requirement the court was analyzing. But finding that the exception did not apply does not obviate the reasonableness balancing. That is because, as the dissent explained, "[t]he absence of judicial review establishes only that the ordinance might not qualify for the recognized exception for administrative subpoenas"; however, "[t]hat is not the only exception to the warrant requirement recognized under the Fourth Amendment, let alone the only basis for upholding a warrantless search on the ground that it was not unreasonable." P.A. 27-28. For example, "[i]n some circumstances, such as '[w]hen faced with special law enforcement needs, diminished expectations of privacy, minimal intrusions, or the like, the Court has found that certain general, or individual, circumstances may render a warrantless search or seizure reasonable.'" *King*, 133 S. Ct. at 1969.

Under the proper framework, § 41.49 is constitutional because warrantless inspections of inns were commonplace at the Founding, and because the hypothesized application of § 41.49 represents a reasonable balance between the City's compelling objectives and the very limited intrusion on the hotel's privacy interests.

1. Warrantless inspections of inns were permissible during the Founding era.

This Court first looks to the existence of a "clear practice, either approving or disapproving the type of search at issue, at the time the constitutional provision was enacted." *Vernonia Sch. Dist. 47J*, 515 U.S. at 652. We have already demonstrated (at 34-36) that inns were heavily regulated at the Founding. But warrantless searches of inns were common during the Founding era. For example, in 1786, Massachusetts required Tythingmen to "carefully inspect all licensed Houses, and to inform of all disorders or misdemeanors which they shall discover or know to be committed in them." Act For The Due Regulation of Licensed Houses, 1786 Mass. Acts Ch. 68 at 206 (1786). In 1791, New Hampshire enacted a similar law "that it shall be the duty of the selectmen carefully to inspect all licensed houses, and in no case to license persons that keep disorderly houses." Power and Duty of Selectmen, N.H. Laws (1791), *reprinted in Complete Justice of the Peace, Containing Extracts from Burn's Justice, and Other Justiciary Productions* 292 (1806). These statutes reflected the common law notion that "a keeper of an inn is in the exercise of a quasi public employment. The law gives him special privileges and he is charged with certain duties and responsibilities to the public." *The Civil Rights Cases*, 109 U.S. 3, 41 (1883) (Harlan, J., dissenting) (emphasis omitted).

Such inspections were evidently accepted at the Founding. *Cf.* William J. Cuddihy, *The Fourth Amendment Origins and Original Meaning 602-1791*, 743 (2009) (noting that several states "main-

tained warrantless inspections of breweries, bakeries, and other kinds of workplaces even as their legislatures were debating the [Fourth] [A]mendment"); *Weiss v. Herlihy*, 23 A.D. 608, 613 (N.Y. 1897) (in an action for trespass seeking to enjoin a police officer from establishing a permanent presence in plaintiff's restaurant to inspect premises for gambling violations, refusing to issue the injunction because the law "authorized [the police] to observe carefully and inspect all places of business having excise or other licenses").

Searches conducted under § 41.49 are, therefore, reasonable for that reason alone.

2. The City's compelling interest in deterring crime in hotels justifies any minimal infringement of a hotel's privacy.

We have already discussed in detail (at 37-43), § 41.49's crucial role in deterring prostitutes, human traffickers, drug dealers and other criminals from setting up shop in hotels. Those interests outweigh whatever claimed expectation of privacy a hotel might have in its register.

Assessment of the intrusion upon individual privacy affected by a search, involves both "the nature of the privacy interest" and the relative obtrusiveness or unobtrusiveness of the search. *Vernonia Sch. Dist. 47J*, 515 U.S. at 654. By either metric, searches under § 41.49 have a minimal effect on privacy interests.

a. The Ninth Circuit concluded that Plaintiffs have a reasonable expectation of privacy in the registers because "businesses do not ordinarily disclose, and are not expected to disclose, the kind of commercially sensitive information contained in the records—*e.g.*, customer lists, pricing practices, and occupancy rates." P.A. 7. There is no evidence in the record from which to assess the validity of that statement as to businesses generally. But what is evident from this record—and in particular, the history of § 41.49—is that the statement is wrong with respect to hotels.

Hotels have a diminished privacy interest in their guest registers. For a long time, owners left their registers open to widespread inspection to a point where guests considered reading the hotel register to be "one of America's most popular indoor sports." Williamson, *supra*, at 190, 181. Guests entered not only their names and addresses, but commentary to entertain future readers. A scan of the register from the Cataract House, in Niagara Falls, reveals one Sally Wiggins, who arrived from Boston "very much fatigued, took a little wine, [and] felt better" in 1828. *Id.* at 185. At the Ball's Hotel in Brownsville, Pennsylvania, a register was kept "after the usual fashion in this country," in which all guests were expected to enter "their names, their town of residence, and their places of destination." In a column for "remarks," visitors tallied their votes for President: "Harrison against the world—Van Buren for ever—Henry Clay, the Pride of Kentucky." *Id.* at 188. During that era, a hotel simply had no expectation of privacy in the "center of hotel social life," whose daily viewing was one of the "common

people's inalienable rights." Harrison Rhodes, *American Towns and People* 178 (1920).

As already discussed (at 4-6), that was the case in Los Angeles all the way from 1899 through 2006, when hotel owners were legally required to keep their guest registers "open to inspection by the lodgers, roomers or guests" of the hotel. L.A. Penal Ordinances § 995 (1899). It is still true in Alameda County, California, where the register "shall at all times be open to public inspection." P.A. 68. Even with that requirement gone, any expectation of privacy in records that a hotel owner has been required to maintain for police inspection since 1899 is at least diminished.

Furthermore, as the Ninth Circuit panel correctly concluded, "[t]he information covered by the Los Angeles ordinance ... does not, on its face, appear confidential or 'private' from the perspective of the hotel operator." P.A. 40. A register of guests' names, addresses, and license plate numbers is not highly personal information *about the hotel*. It is not information concerning "familial, political, professional, religious, and sexual associations" of the hotel. *United States v. Jones*, 132 S. Ct. 945, 955 (2012) (Sotomayor, J. concurring) (citation omitted). And it does not allow the government to get to know a hotel's "doctors, lawyers, creditors, political allies, social connections, religious affiliation, educational interests, the papers and magazines he reads, and so on ad infinitum." *Cal. Bankers Ass'n v. Shultz*, 416 U.S. 21, 85 (1974) (Douglas, J., dissenting). Similarly, hotel "pricing practices" are certainly not private, as Los Angeles hotels are required to post their room

rates in a conspicuous place. *See* Cal. Civ. Code § 1863.

This Court did not believe that a bank had a privacy interest in similar information in *California Bankers Association*, a challenge to the Bank Secrecy Act. Implementing regulations of the Act required banks to report domestic financial transactions greater than $10,000, along with the name, address and social security number of the person conducting the transaction and a summary of the nature of the transaction. *Id.* at 39 & n.15. Banks challenged the regulation as violating their Fourth Amendment rights. This Court had "no difficulty" concluding that the reporting requirements "abridge[d] no Fourth Amendment right of the banks themselves." *Id.* at 66. The Court simply held that the required information "is sufficiently described and limited in nature," and sufficiently related to the government purpose, "so as to withstand the Fourth Amendment challenge made by the bank plaintiffs." *Id.* at 67. If a bank does not have a substantial expectation of privacy in the names and social security numbers of its customers—at least when it comes to turning those materials over to the police (as opposed to a competitor)—then a hotel's expectation of privacy, if any, would be even lower with respect to less valuable and personal information.[4]

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[4] Although the "relative unobtrusiveness of the search," *Vernonia Sch. Dist. 46J*, 515 U.S. at 664, discussed *infra*, may be different where the required records must be reported to the government versus maintained for police inspection, the business owner's *privacy interest* in the information contained therein is not.

b. The record inspections contemplated by § 41.49 are also particularly unobtrusive: The police need never step foot into private areas, are authorized to look only at the register itself, and do nothing but look at pages of a book (or cards or a computer spreadsheet) with no danger of the search leeching outside those records. Thus, this case is unlike the precedents in which this Court disapproved warrantless searches of "locked commercial warehouse[s]" or "portions of commercial premises which are not open to the public." *See*, 387 U.S. at 541, 545; *Marshall*, 436 U.S. at 310 ("nonpublic area of the business").

C. There Are Substantial Applications of § 41.49 That Are Constitutional.

The previous section addresses only the application of § 41.49 that the Ninth Circuit hypothesized. But that is not how a facial challenge works. This Court cannot strike a statute on its face unless "no set of circumstances exists under which the Act would be valid." *Salerno*, 481 U.S. at 745. This Court could affirm simply by concluding that some of the other scenarios discussed above (at 19-20) are constitutional, without even addressing the constitutionality of the Ninth Circuit's hypothetical.

Some would be less intrusive physically (*e.g.*, scenarios 1 and 2), others would be less invasive of any possible privacy interests (*e.g.*, scenarios 1 and 3), and in others the inspection is plainly justified and § 41.49 is invoked merely to require cooperation (scenarios 4 and 5). All of them would affect one or more factors of the reasonableness balancing. Consider, for example, the hotels (described in scenario 1) that continue to keep their registers the way they

were legally required to be kept from 1899 until eight years ago: "open to inspection by the lodgers, roomers or guests" of the hotel. LAMC § 47.01. Any minimal expectation of privacy that these hotels might claim in such records would dwindle, if not evaporate entirely.

There is not enough room in this brief to address the ramifications of all the other scenarios, and "such important constitutional questions should not rise and fall on the vagaries of judicial imaginations." P.A. 18.

CONCLUSION

This Court should reverse the judgment of the court of appeals.

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STATUTORY ADDENDUM

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L.A., Cal., Mun. Code § 41.49 (2008) (Current Version)

(Amended by Ord. No. 179,533, Eff. 3/8/08.)

1. **Definitions.** For purposes of this section:

Guest means a person who exercises occupancy or is entitled to occupancy in a hotel by reason of concession, permit, right of access, license or other agreement.

Hotel means any public or private space or structure, including but not limited to, any inn, hostelry, tourist home, motel, lodging house or motel rooming house offering space for sleeping or overnight accommodations in exchange for rent and for a period of less than 30 days. Hotel includes the parking lot and other common areas of the hotel. Hotel does not include living accommodations provided at any governmental or nonprofit institution in connection with the functions of that institution.

Housing Voucher means a voucher, certificate or coupon for lodging issued individually or jointly by any of the following, or an agency or authority of any one or more of the following: (1) the federal government; (2) the State of California or another state; (3) a county; (4) a municipality; or (5) a non-profit entity that issues vouchers, certificates or coupons for lodging to homeless individuals or families.

Identification document means a document that contains the name, date of birth, description and picture of a person, issued by the federal

government, the State of California, another state, a county or municipal government subdivision or one of their agencies, including but not limited to: a motor vehicle operator's license, an identification card, or an identification card issued to a member of the Armed Forces. Identification document also includes a passport issued by a foreign government or a consular identification card, issued by a foreign government to any of its citizens and nationals, which has been approved by the City of Los Angeles as valid identification.

Occupancy means the use or possession, or the right to the use or possession, of any room in any hotel.

Operator means the person who is either the proprietor of the hotel or any other person who has the right to rent rooms within the hotel, whether in the capacity of owner, manager, lessee, mortgagee in possession, licensee, employee or in any other capacity.

Record means written documentation of information about a guest. A record may be maintained electronically, in a book or on cards.

Rent means the consideration charged, whether or not received, for the occupancy of a room in a hotel valued in money, whether to be received in money, goods, labor or otherwise, including all receipts, cash, credits and property and services of any kind or nature.

Reservation means a request to hold a room for a potential guest that includes the following information and is documented in writing: (i) The

potential guest's name and contact information; and (ii) the date and time when the contact was made.

Room means any portion of a hotel, which is designed or intended for occupancy by a person for temporary lodging or sleeping purposes.

Walk-in guest means any guest who did not make a reservation for a room prior to the time that he or she seeks to check in at the hotel

2. **Hotel Record Information.**

(a) Every operator of a hotel shall keep a record in which the following information shall be entered legibly, either in electronic, ink or typewritten form prior to the room being furnished or rented to a guest:

(1) As provided by the guest in response to an inquiry or by other means:

(i) The name and address of each guest and the total number of guests;

(ii) The make, type and license number of the guest's vehicle if the vehicle will be parked on hotel premises that are under the control of the Operator or hotel management;

(iii) Identification information as required by Subsection 4 (a) and (b) of this section.

(2) The day, month, year and time of arrival of each guest;

(3) The number or other identifying symbol of location of the room rented or assigned each guest;

(4) The date that each guest is scheduled to depart;

(5) The rate charged and amount collected for rental of the room assigned to each guest;

(6) The method of payment for the room; and

(7) The full name of the person checking in the guest.

(b) For a guest checking in via an electronic registration kiosk at the hotel, instead of the information required by Subsection 2.(a), the hotel shall maintain the name, reservation information and credit card information provided by the guest, as well as the identifying symbol of the kiosk where the guest checked in and the room number assigned to the guest.

3. **Maintenance of Hotel Record**. Every operator of a hotel shall comply with the following requirements for maintaining the hotel record.

(a) The record shall be kept on the hotel premises in the guest reception or guest check-in area or in an office adjacent to that area. The record shall be maintained at that location on the hotel premises for a period of 90 days from and after the date of the last entry in the record and shall be made available to any officer of the Los Angeles Police Department for inspection. Whenever possible, the

inspection shall be conducted at a time and in a manner that minimizes any interference with the operation of the business.

(b) No person shall alter, deface or erase the record so as to make the information recorded in it illegible or unintelligible, or hinder, obstruct or interfere with any inspection of the record under this section.

(c) Any record maintained in the form of a book shall be permanently bound, each page shall be sequentially numbered and the book shall be the minimum size of eight by ten inches. No page shall be removed from the book. Any record maintained in the form of cards shall be on cards that are the minimum size of two and one-half inches by four inches and numbered consecutively and used in sequence. Any card numbered within the sequence of utilized cards shall be preserved as part of the record even if it is not used for a room rental. The numbers shall be printed or otherwise indelibly affixed to the cards. If maintained electronically, the record shall be printable.

(d) Nothing in this section absolves the operator from maintaining the record for longer than 90 days in order to comply with any other provision of law, including the obligation to maintain and produce records for the purpose of paying a transient occupancy tax.

4. **Renting of Hotel Rooms**. The operator of a hotel shall not rent a room except in compliance with the following conditions.

(a) A guest who pays all or part of the rent for a room in cash at the time of checking in, and a walk-in guest, shall be required to present an identification document or a housing voucher at the time of checking into the hotel.

(b) A room shall not be rented hourly or for fewer than 12 hours unless an identification document is obtained from the guest when he or she checks into the hotel.

(c) The number and expiration date of the identification document obtained under Subsections 4.(a) or (b) shall be recorded and maintained by the operator in the record for at least 90 days or if the guest is paying with a housing voucher obtained under Subsection 4.(a), a copy of the housing voucher shall be maintained with the record for at least 90 days.

5. **Training of employees.** The owner or proprietor of a hotel business shall take all reasonable steps, including but not limited to, providing training regarding this section to ensure that the person who checks a person into the hotel complies with the provisions of this section. A person who has not been trained shall not be assigned to check persons into the hotel.

6. **Guest obligations.**

(a) No person shall give any assumed, false or fictitious name, or any other name other than his or her true name when checking into a hotel.

(b) No person shall present to any hotel identification that is any way false, altered or counterfeit or belongs to another person.

(c) Subsection 6. shall not apply to law enforcement personnel engaged in an investigation.

L.A., Cal., Ordinance 177966 (Oct. 6, 2006)

ORDINANCE No. 177966

WHEREAS, some hotels and motels are responsible for a disproportionate share of police resources because of repeated calls for service and complaints of crime and this criminal activity is a real and compelling concern to the City of Los Angeles, the residents of the City of Los Angeles as well as visitors to the City of Los Angeles, and the hotel/motel industry itself;

WHEREAS, some hotels and motels offer shelter to parole violators and fugitives and provide bases of operation for criminal enterprises, such as prostitution, manufacturing of forged identity documents and trafficking in illegal narcotics;

WHEREAS, persons who rent rooms for illegal purposes generally pay for their rooms with cash and do not have advance reservations, and therefore requiring such persons to provide identification will preserve the rights of consumers to use hotels and motels for legitimate purposes while discouraging the use of hotel and motel rooms for illegal activities, particularly prostitution and narcotics offenses;

WHEREAS, some motels and hotels rent rooms by the hour and for short periods of time, thereby facilitating and encouraging illegal activity, especially prostitution, and requiring guests who rent rooms hourly or who rent for less than 12 hours to produce identification will discourage illegal activity;

WHEREAS, requiring certain minimum information to be maintained in hotel and motel registers and inspection of hotel and motel registers by the police department is a significant factor in reducing crime in hotels and motels;

WHEREAS, it is imperative that owners and proprietors of hotels and motels train the employees who check persons into these establishments so that the employees can obtain the information required by this ordinance; and

WHEREAS, the Los Angeles Municipal Code currently contains two sections, Sections 41.49 and 47.01, that require the maintenance of registers for hotels and motels and in order to combine hotel/motel registration requirements into one section, Section 47.01 should be repealed,

NOW THEREFORE,

THE PEOPLE OF THE CITY OF LOS ANGELES DO ORDAIN AS FOLLOWS:

Section 1. Section 41.49 of the Los Angeles Municipal Code is amended to read:

HOTEL REGISTERS AND ROOM RENTALS

1. **Definitions.** For purposes of this section:

Guest means a person who exercises occupancy or is entitled to occupancy in a hotel by reason of concession, permit, right of access, license or other agreement.

Hotel means any public or private space or structure, including but not limited to, any inn, hostelry, tourist home, motel, lodging house or motel

rooming house offering space for sleeping or overnight accommodations in exchange for rent and a period of less than 30 days. Hotel includes the parking lot and other common areas of the hotel. Hotel does not include living accommodations provided at any governmental or nonprofit institution in connection with the functions of that institution.

Identification document means a document that contains the name, date of birth, description and picture of a person, issued by the federal government, the State of California or another state, or a county or municipal government subdivision or agency, or any of the foregoing, including but not limited to, a motor vehicle operator's license, an identification card, or an identification card issued to a member of the Armed Forces. Identification document also includes a passport issued by a foreign government.

Occupancy means the use or possession, or the right to the use or possession, of any room in any hotel.

Operator means the person who is either the proprietor of the hotel or any other person who has the right to rent rooms within the hotel, whether in the capacity of owner, manager, lessee, mortgagee in possession, licensee, employee or any other capacity.

Record means written documentation of information about a guest. A record may be maintained electronically, in a book or on cards.

Rent means the consideration charged, whether or not received, for the occupancy of a room in a hotel

valued in money, whether to be received in money, goods, labor or otherwise, including all receipts, cash, credits and property and services of any kind or nature.

Reservation means a request to hold a room for a potential guest that includes the following information and is documented in writing: (1) The potential guest's name and contact information and (2) the date and time when the contact was made.

Room means any portion of a hotel, which is designed or intended for occupancy by a person for temporary lodging or sleeping purposes.

Walk-in guest means any guest who did not make a reservation for a room prior to the time that he or she seeks to check in at the hotel.

2. Hotel Record Information.

(a) Every operator of a hotel shall keep a record in which the following information shall be entered legibly, either in electronic, ink or typewritten form prior to the room being furnished or rented to a guest:

(1) (i) The name and address of each guest and the total number of guests; (ii) The make, type and license number of the guest's vehicle if the vehicle will be parked on the hotel premises; and (iii) Identification information as required by Subsection 4 (a) and (b) of this section, all of which shall be as provided by the guest in response to an inquiry or by other means.

(2) The day, month, year and time of arrival of each guest.

(3) The number or other identifying symbol of location of the room rented or assigned each guest.

(4) The date that each guest is scheduled to depart.

(5) The rate charged and amount collected for rental of the room assigned to each guest.

(6) The method of payment for the room.

(7) The full name of the person checking in the guest or other identifying symbol if the alternative procedure specified in Subsection 2.A is utilized.

(b) In the event that the hotel utilizes an electronic pre-arrival registration or approval procedure that obviates the requirement for a guest to personally provide information typically required as part of the hotel's customary registration process, the hotel shall not be required to comply with Subsection 4 of this section; provided however, that the hotel's pre-arrival registration or approval procedure must be submitted to and approved by the Board of Police Commissioners, and the hotel must obtain the guest-related information of the type specified in Subsection 4 as the Board of Police Commissioners might reasonably require.

3. Maintenance of Hotel Record. Every operator of a hotel shall comply with the following requirements for maintaining the hotel record.

(a) The record shall be kept on the hotel premises in the guest reception or guest check-in area or in an office adjacent to that area. The record shall be maintained at the location on the hotel premises for a period of 90 days from and after the

date of the last entry in the record and shall be made available to any officer of the Los Angeles Police Department for inspection. Whenever possible, the inspection shall be conducted at a time and in a manner that minimizes any interference with the operation of the business.

(b) No person shall alter, deface or erase the record so as to make the information recorded in it illegible or unintelligible, or hinder, obstruct or interfere with any inspection of the record under this section.

(c) Any record maintained in the form of a book shall be permanently bound, each page shall be sequentially numbered and the book shall be the minimum size of eight by ten inches. No page shall be removed from the book. Any record maintained in the form of cards shall be on cards that are the minimum size of two and one-half inches by four inches and numbered consecutively and used in sequence. Any card numbered within the sequence of utilized cards shall be preserved as part of the record even if it is not used for a room rental. The numbers shall be printed or otherwise indelibly affixed to the cards. If maintained electronically, the record shall be printable.

(d) Nothing in this section absolves the operator from maintaining the record for longer than 90 days in order to comply with any other provision of law, including the obligation to maintain and produce records for the purpose of paying a transient occupancy tax.

4. Renting of hotel rooms. The operator of a hotel shall not rent a room except in compliance with the following conditions.

(a) A guest who pays all or part of the rent for a room in cash at the time of checking in, and a walk-in guest, shall be required to present an identification document at the time of checking into the hotel.

(b) A room shall not be rented hourly or for less than 12 hours unless an identification document is obtained from the guest when he or she checks into the hotel.

(c) The number and expiration date of the identification document obtained under Subsection 4 (a) or (b) shall be recorded and maintained by the operator in the record for at least 90 days.

5. Training of employees.

The owner or proprietor of a hotel business shall take all reasonable steps, including but not limited to, providing training regarding this section to ensure that the person who checks a person into the hotel complies with the provisions of this section. A person who has not been trained shall not be assigned to check persons into the hotel.

6. Guest obligations.

(a) No person shall give any assumed, false or fictitious name, or any other name other than his or her true name when checking into a hotel.

(b) No person shall present to any hotel identification that is any way false, altered or counterfeit or belongs to another person.

(c) Subsection 6 shall not apply to law enforcement personnel engaged in an investigation.

Sec. 2. Los Angeles Municipal Code Section 47.01 is repealed.

Sec. 3. The City Clerk shall certify to the passage of this ordinance and have it published in accordance with Council policy, either in a daily newspaper circulated in the City of Los Angeles or by posting for ten days in three public places in the City of Los Angeles: one copy on the bulletin board located at the Main Street entrance to the Los Angeles City Hall; one copy on the bulletin board located at the Main Street entrance to the Los Angeles City Hall East; and one copy on the bulletin board located at the Temple Street entrance to the Los Angeles County Hall of Records.

I hereby certify that this ordinance was passed by the Council of the City of Los Angeles, at its meeting of OCT 06 2006.

FRANK MARTINEZ, City Clerk

By /s/
Deputy

Approved 20 OCT 2006

/s/
ACTINGMayor

SA 16

Approved as to Form and Legality

ROCKARD J. DELGADILLO, City Attorney

By /s/ Asha Greenberg
ASHA GREENBERG
Assistant City Attorney

Date 10/6/06

Rev. 10/6/06

CF 06-0125

DECLARATION OF POSTING ORDINANCE

I, MARIA C. RICO, state as follows: I am, and was at all times hereinafter mentioned, a resident of the State of California, over the age of eighteen years, and a Deputy City Clerk of the City of Los Angeles, California.

Ordinance No. **177966** – **Amending Section 41.49 of the Los Angeles Municipal Code and repealing Section 47.01 of the Los Angeles Municipal Code** – a copy of which is hereto attached, was finally adopted by the Los Angeles City Council on **October 6, 2006,** and under the direction of said City Council and the City Clerk, pursuant to Section 251 of the Charter of the City of Los Angeles and Ordinance No. 172959, on **October 23, 2006** I posted a true copy of said ordinance at each of three public places located in the City of Los Angeles, California, as follows: 1) one copy on the bulletin board located at the Main Street entrance to the Los Angeles City Hall; 2) one copy on the bulletin board located at the Main Street entrance to the Los Angeles City Hall East; 3) one copy on the bulletin board located at the Temple Street entrance to the Hall of Records of the County of Los Angeles.

Copies of said ordinance were posted conspicuously beginning on **October 23, 2006** and will be continuously posted for ten or more days.

I declare under penalty of perjury that the foregoing is true and correct.

Signed this **23rd** day of **October 2006** at Los Angeles, California.

/s/ Maria C. Rico

Maria C. Rico, Deputy City Clerk

Ordinance Effective Date: December 2, 2006
Council File No. 06-0125

Rev. (2/21/06)

L.A., Cal., Mun. Code § 41.49 (1964)

(Added by Ord. No. 127.508, Eff. 6/29/64.)

Every person who owns or operates a motel shall keep a register in which shall be entered:

(a) The name and address of each guest, and the name and address of each member of his party.

(b) In the event that such guest or his party travels by means of motor vehicle, the register shall specify the make, type and license number of the motor vehicle and the year of registration. Said register shall at all times be open for inspection to all police officers.

L.A., Cal., Mun. Code § 47.01 (1936)

(a) Every owner, keeper or proprietor of any lodging house, rooming house or hotel shall keep a register wherein he shall require all guests, roomers or lodgers to inscribe their names upon their procuring lodging or a room or accommodations. Said register shall also show the day of the month and year when said name was inscribed, and the room occupied or to be occupied by said lodger, or roomer or guest in such lodging house, rooming house or hotel. Said register shall be kept in a conspicuous place in said lodging house, rooming house, or hotel, and shall at all times be open to inspection by the lodgers, roomers or guests of said lodging house, rooming house, or hotel, and the Chief of Police or any regular policeman or police detective.

(b) **Hotels—Guests Must Register:** Before furnishing any lodging for hire to any person in any lodging house, or before renting any room to any person in any rooming house, or before furnishing any accommodations to any guest at any hotel, the proprietor, manager or owner thereof, shall require the person to whom such lodgings are furnished, or room is rented, or accommodations furnished, to inscribe his name in such register kept for that purpose as hereinbefore provided, and shall set opposite said name the time when said name was so inscribed, and also the room occupied by such lodger, roomer or guest.

L.A., Cal., Penal Ordinances §§ 995-997 (1899)

LODGING HOUSES AND HOTELS TO KEEP REGISTER.

Ordinance 5760, New Series

[Approved April 28, 1899]

Register to be kept

Section 995. That every owner, keeper or proprietor of any lodging house, rooming house, or hotel in said City of Los Angeles, shall, from and after the adoption of this ordinance, keep a register wherein he shall require all guests, roomers or lodgers to inscribe their names upon their procuring lodging or a room or rooms, or accommodations in such lodging house or rooming house, or hotel.

Contents of register

The said register shall also show the time when said name was inscribed, meaning the day of the month and year, also the room or rooms occupied or to be occupied by said lodger, or roomer or guest in such lodging house, or rooming house or hotel.

Said register shall be kept in a conspicuous place in said lodging house, rooming house or hotel, and shall at all times be open to inspection by the lodgers, roomers or guests of said lodging house, rooming house or hotel, and to the Chief of Police or any regular policeman or police detective of said City of Los

Inspection of register

Angeles. (*Ord. 5760, N. S., Sec. 1*)

Register must be signed

Sec. 996. That before furnishing any lodging for hire to any person in any lodging house, or before renting any room to any person or persons in any rooming house, or before furnishing any accommodations to any guest at any hotel in the City of Los Angeles, the proprietor, manager or owner thereof shall require the person to whom such lodgings are furnished, or room is rented, or accommodations furnished, to inscribe his name in such register kept for that purpose as hereinbefore provided and shall set opposite said name the time when said name was so inscribed, and also the room or rooms occupied by such lodger, roomer or guest. (*Ord. 5760, N. S., Sec. 2*)

Penalty

Sec. 997. Any violation of said ordinance shall constitute a misdemeanor and shall be punishable by a fine not to exceed one hundred ($100.00) dollars, or by imprisonments in the City Jail of said City of Los Angeles and not to exceed fifty (50) days or by both such fine and imprisonment. (*Ord. 5760, N. S., Sec. 3*)

L.A., Cal., Mun. Code § 11.00 (2004) (Current Version)

(Amended by Ord. No. 175,676, Eff. 1/11/04.)

(a) **Short Title. Reference to Code in Prosecutions. Designation in Ordinances.** This Code, which consists of criminal or regulatory ordinances of this City, shall be known as the "Official Los Angeles Municipal Code," and it shall be sufficient to refer to the Code as the "Los Angeles Municipal Code" in any prosecution for the violation of any of its provisions; it shall also be sufficient to designate any ordinance adding to, amending or repealing this Code or a portion of this Code as an addition or amendment to or a repeal of the "Los Angeles Municipal Code."

(b) **Existing Law Continued.** The provisions of this Code, to the extent they are substantially the same as existing provisions relating to the same subject matter, shall be construed as restatements and continuations of the Code and not as new enactments.

(c) **Construction.** The provisions of this Code and all proceedings under it are to be construed with a view to effect its objectives and to promote justice.

(d) **Effect of Code on Past Actions and Obligations Previously Accrued.** Neither the adoption of this Code nor the repeal of any ordinance of this City shall in any manner affect the prosecution for violation of ordinances, which violations were committed prior to the effective date of the ordinance, nor be construed as a waiver of any

license or penalty at the effective date due and unpaid under the ordinance, nor be construed as affecting any of the provisions of the ordinance relating to the collection of any license or penalty or the penal provisions applicable to any violation, nor to affect the validity of any bond or cash deposit in lieu of a bond, required to be posted, filed or deposited pursuant to any ordinance or its violation, and all rights and obligations associated with the ordinance shall continue in full force and effect.

(e) **References to Specific Ordinances.** The provisions of this Code shall not in any manner affect deposits or other matters of record which refer to, or are otherwise connected with ordinances that are specially designated by a number or otherwise and which are included within this Code, but those references shall be construed to apply to the corresponding provisions contained within this Code.

(f) **Heading, Effect of.** Division, chapter, article and section headings contained in this Code shall not be deemed to govern, limit, modify or in any manner affect the scope, meaning or intent of the provisions of any division, chapter, article or section.

(g) **Reference to Acts or Omissions Within This City.** This Code shall refer only to the omission or commission of acts within the territorial limits of the City of Los Angeles and that territory outside of this City over which the City has jurisdiction or control by virtue of the Constitution, Charter or any law, or by reason of ownership or control of property.

(h) **Proof of Notice.** Proof of giving any notice may be made by the certificate of any officer or employee of this City or by affidavit of any person over the age of 18 years, which shows service in conformity with this Code or other provisions of law applicable to the subject matter concerned.

(i) **Notices, Service of.** Whenever a notice is required to be given under this Code, unless different provisions in this Code are otherwise specifically made applicable, the notice may be given either by personal delivery to the person to be notified or by deposit in the United States Mail in a sealed envelope, postage prepaid, addressed to the person to be notified at his or her last known business or residence address as it appears in the public records or other records pertaining to the matter to which the notice is directed. Service by mail shall be deemed to have been completed at the time of deposit in the mail.

(j) **Prohibited Acts; Include Causing, Permitting, Suffering.** Whenever in this Code any act or omission is made unlawful it shall include causing, permitting, aiding, abetting, suffering or concealing the fact of the act or omission.

(k) **Validity of Code.** If any section, subsection, sentence, clause, phrase or portion of this Code is for any reason held to be invalid or unconstitutional by the decision of any court of competent jurisdiction, that decision shall not affect the validity of the remaining portions of this Code. The Council of this City hereby declares that it would have adopted this Code and each section, subsection, sentence, clause, phrase or portion of the Code, irrespective of the fact

that any one portion or more sections, subsections clauses, phrases or portions are declared invalid or unconstitutional.

(l) In addition to any other remedy or penalty provided by this Code, any violation of any provision of this Code is declared to be a public nuisance and may be abated by the City or by the City Attorney on behalf of the people of the State of California as a nuisance by means of a restraining order, injunction or any other order or judgment in law or equity issued by a court of competent jurisdiction. The City or the City Attorney, on behalf of the people of the State of California, may seek injunctive relief to enjoin violations of, or to compel compliance with, the provisions of this Code or seek any other relief or remedy available at law or equity. **(Amended by Ord. No. 177,103, Eff. 12/18/05.)**

Violations of this Code are deemed continuing violations and each day that a violation continues is deemed to be a new and separate offense and subject to a maximum civil penalty of $2,500 for each and every offense.

As part of any civil action, the court may require posting of a performance bond to ensure compliance with this Code, applicable state codes, court order or judgment.

(m) It shall be unlawful for any person to violate any provision or fail to comply with any of the requirements of this Code. Any person violating any of the provisions or failing to comply with any of the mandatory requirements of this Code, shall be guilty of a misdemeanor unless that violation or failure is

declared in this Code to be an infraction. An infraction shall be tried and be punishable as provided in Section 19.6 of the Penal Code and the provisions of this section. Any violation of this Code that is designated as a misdemeanor, may be charged by the City Attorney as either a misdemeanor or an infraction.

Every violation of this Code is punishable as a misdemeanor unless provision is otherwise made, and shall be punishable by a fine of not more than $1,000.00 or by imprisonment in the County Jail for a period of not more than six months, or by both a fine and imprisonment.

Every violation of this Code that is established as an infraction, or is charged as an infraction, is punishable by a fine as set forth in this Code section, or as otherwise provided in this Code, not to exceed $250.00 for each violation.

As an alternative enforcement method that may be used in the sole discretion of the City, violations of this Code may be addressed through the use of an Administrative Citation as set forth in Article 1.2 of Chapter 1 of this Code. The administrative fines prescribed by Chapter 1, Article 1.2 may be sought in addition to any other remedy, including, but not limited to, criminal remedies, injunctive relief, specific performance, and any other remedy provided by law. The remedies provided by Chapter 1, Article 1.2 of this Code are cumulative to those prescribed by this Code or other applicable law and are not exclusive. **(Added by Ord. No. 182,610, Eff. 8/2/13.)**

Each person shall be guilty of a separate offense for each and every day during any portion of which any violation of any provision of this Code is committed, continued or permitted by that person, and shall be punishable accordingly.

(n) Pursuant to Government Code Section 38773, the City may summarily abate any nuisance at the expense of the persons creating, causing, committing, or maintaining it and the expense of the abatement of the nuisance may be a lien against the property on which it is maintained and a personal obligation against the property owner.

(o) Pursuant to Government Code Section 38773.7, upon entry of a second or subsequent civil or criminal judgment within a two-year period that finds an owner of property responsible for a condition that may be abated in accordance with California Government Code Section 38773.5, a court may order the owner to pay treble the costs of the abatement. These costs shall not include conditions abated pursuant to California Health and Safety Code Section 17980.

L.A., Cal., Mun. Code § 11.00(m) (1936)

It shall be unlawful for any person to violate any provision or fail to comply with any of the requirements of this Code. Any person violating any of the provisions or failing to comply with any of the mandatory requirements of this Code, shall be guilty of a misdemeanor. Any person convicted of a misdemeanor under the provisions of this Code, unless provision is otherwise herein made, shall be punishable by a fine of not more than $500.00 or by imprisonment in the City Jail for a period of not more than six months or by both such fine and imprisonment. Each such person shall be guilty of a separate offense for each and every day during any portion of which any violation of any provision of this Code is committed, continued, or permitted by such person and shall be punishable accordingly. In addition to the penalties hereinabove provided, any condition caused or permitted to exist in violation of any of the provisions of this Code shall be deemed a public nuisance and may be, by this City, summarily abated as such, and each day that such condition continues shall be regarded as a new and separate offense.

RESPONDENT'S BRIEF

No. 13-1175

IN THE

Supreme Court of the United States

CITY OF LOS ANGELES,

Petitioner,

v.

NARANJIBHAI PATEL ET AL.,

Respondents.

On a Writ of Certiorari
to the United States Court of Appeals
for the Ninth Circuit

BRIEF FOR THE RESPONDENTS

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QUESTIONS PRESENTED

This Court granted certiorari to address these two questions:

1. To resolve a split between the Ninth and Sixth Circuits are facial challenges to ordinances and statutes permitted under the Fourth Amendment?

2. To resolve a split between the Ninth Circuit and the Massachusetts Supreme Court, does a hotel have an expectation of privacy under the Fourth Amendment in a hotel guest registry where the guest supplied information is mandated by law and that ordinance authorizes the police to inspect the registry? If so, is the ordinance facially unconstitutional under the Fourth Amendment unless it expressly provides for pre-compliance judicial review before the police can inspect the registry?

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BRIEF FOR THE RESPONDENTS

Exposing *government* conduct to sunlight may be the "best of disinfectants." Petr. Br. 1 (quoting LOUIS BRANDEIS, OTHER PEOPLE'S MONEY 92 (1914)). But the Fourth Amendment was enacted precisely to prevent the "the privacies of life of all the people . [from being] exposed to the agents of the government, who will act at their own discretion, the honest and the dishonest, unauthorized and unrestrained by the courts." *Olmstead v. United States*, 277 U.S. 438, 479 n.12 (1928) (Brandeis, J., dissenting).

For that reason, "review by a neutral and detached magistrate is the time-tested means of effectuating Fourth Amendment rights," *United States v. U.S. Dist. Court*, 407 U.S. 297, 318 (1972), and a search must be authorized by a warrant, "subject only to a few specifically established and well-delineated exceptions." *Katz v. United States*, 389 U.S. 347, 357 (1967). Even in exceptional cases where a warrant is not required, it is only in the rarest circumstances that the Fourth Amendment permits the government to bypass the judiciary altogether by criminalizing a citizen's resistance to a search demand. *See, e.g.*, *New York v. Burger*, 482 U.S. 691, 700, 702 (1987).

Against this backdrop, the City of Los Angeles seeks to defend an ordinance that authorizes the police to carry out warrantless, suspicionless searches of hotel registries while providing no avenue for hotel owners to challenge the searches before complying. Los Angeles Municipal Code (LAMC) § 41.49. Sitting en banc, the Ninth Circuit held the ordinance unconstitutional on its face because it

subjects hotels "to the 'unbridled discretion' of officers in the field" without adequate "procedural safeguard[s] against arbitrary or abusive inspection demands." Pet. App. 12.

That decision should be affirmed. Because the City fails to show any special need for endowing individual police officers with this extraordinary authority, the Court cannot accept petitioner's interpretation of the Fourth Amendment without simultaneously encouraging governments throughout the country to adopt similar laws providing police with unfettered access to all manner of business records. That result would turn a narrow Fourth Amendment exception into the rule, doing violence to the privacy the Founders intended the Amendment to secure.

STATEMENT OF THE CASE

I. Background Of The Ordinance

Los Angeles Municipal Code Section 41.49 imposes two distinct requirements on all hotel owners. First, owners must record a variety of information about their guests, including their names, addresses, vehicle information, arrival and departure dates, room prices, and payment methods. Any guest who rents a room without a reservation or by paying in cash is required to present identification, such as a driver's license, and the hotel must record the identification number and expiration date. LAMC § 41.49(4)(a), (c). For guests checking in with a credit card at an electronic kiosk, the hotel must record the credit card information. *Id.* § 41.49(2)(b). The ordinance further criminalizes

providing a pseudonym or other false information. *Id.* §§ 41.49(6)(a), (b), 11.00(m).

Separately, Section 41.49 requires that hotels make these records "available to any officer of the Los Angeles Police Department for inspection" on demand. *Id.* § 41.49(3)(a). As petitioner concedes, this provision authorizes inspections at any time "without consent or warrant," and without probable cause or even suspicion. Petr. Br. 8. The provision also does not permit hotel owners to challenge an officer's demand before a neutral judge or magistrate before having to comply. Instead, the ordinance makes failure to produce the registry on command a crime. LAMC §§ 41.49(3)(a), 11.00(m).

Officers thus may search any hotel irrespective of its history of criminal activity or non-compliance with the recordkeeping requirement. The ordinance also provides no limitation on the registration records officers may search, instead allowing police to comb through the guests' data in any way they see fit. There is no limit on how officers may use the information they find, how long they can retain it, or with whom they may share it. In particular, nothing prevents officers from using the information as evidence of a crime. In fact, as petitioner has frankly admitted, the search authority provided in Section 41.49 is intended "expressly [to] help police investigate crimes such as prostitution and gambling, capture dangerous fugitives and even authorize federal law enforcement to examine these registers." Pet. 6.

II. Facts And Procedural History

1. Respondents are approximately forty hotel owners and the Los Angeles Lodging Association, of which the hotel owners are members. J.A. 31. The owners are Asian-Indian immigrants. *Id.* Respondents maintain guest registries, which they use both to satisfy the requirements of Section 41.49 and for unrelated tax and business purposes. *Id.* 144-45. Officers of the Los Angeles Police Department have conducted and continue to conduct warrantless searches and seizures of respondents' hotel registries under the ordinance. *Id.* 194-95.[1]

2. Respondents challenged these searches in multiple suits in the United States District Court for the Central District of California.[2] As relevant here, the complaints alleged that the ordinance violates the Fourth Amendment, and sought declaratory and injunctive relief. J.A. 37-38, 41, 53, 57, 94, 97. Each also presented as-applied challenges to past searches seeking damages against the City and individual officers. *Id.* 33-39, 48-54, 76-81.

In various pretrial agreements, the parties agreed to streamline the litigation by consolidating the challenges to Section 41.49 into a single case.

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[1] Counsel recently learned that respondents Naranjibhai and Ramilaben Patel no longer own a Los Angeles motel. This development does not raise any mootness question for the Court, however, because the other respondents have Article III standing. *See, e.g.*, *Bowsher v. Synar*, 478 U.S. 714, 721 (1986) (declining to adjudicate standing when some plaintiffs had it).

[2] Respondents did not challenge the recordkeeping requirements.

J.A. 110-11. To make this trial as efficient as possible, petitioner and respondents agreed to an initial phase of litigation in which "the sole issue in the consolidated action [would be] a facial constitutional challenge to LAMC section 41.49 under the Fourth Amendment." *Id.* 195.[3] They further agreed to put the as-applied damages claims on hold by dismissing them without prejudice and tolling the statute of limitations for those claims pending resolution of the facial challenge. *Id.* 110-11. This arrangement permitted the City, the individual defendants, and the court to avoid the cost and complication of litigating the as-applied challenges until the fundamental Fourth Amendment question had been resolved.

Over the next four years, the City litigated the facial constitutionality of the ordinance, asking the courts to reject respondents' facial challenge on the merits.[4] After a bench trial in 2008, the district court obliged. As an initial matter, the court rejected petitioner's argument that Los Angeles hotels fall within the "pervasively regulated industries" exception to warrant requirement under *New York v. Burger*, 482 U.S. 691 (1987). *See* Pet. App. 54-55. Petitioner had submitted "*no evidence* that hotels have been subjected to the same kind of pervasive

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[3] Shortly before an initial bench trial in 2006, the City amended the ordinance, causing the court to order a new trial in 2008. *See* J.A. 177, 201. Before each trial, petitioner agreed that the constitutionality of the ordinance was the sole issue. *Id.* 110, 195.

[4] *See, e.g.*, Def.'s Tr. Br. 8-9.

and regular regulations as other recognized 'closely regulated' businesses." *Id.* 54 (emphasis added). Consequently, the court was "not persuaded *on this record* that hotels and motels are closely regulated businesses for purposes of the administrative search exception to the Fourth Amendment." *Id.* 55 (emphasis added).

The district court nevertheless ruled for petitioner on a different ground, holding that the registry inspections authorized by the ordinance did not constitute a "search" within the meaning of the Fourth Amendment because respondents lacked a reasonable expectation of privacy in the registries. Pet. App. 55-56. Consequently, the court dismissed the facial challenge. *Id.* 57.

3. A divided panel of the United States Court of Appeals for the Ninth Circuit affirmed, agreeing that hotels have no constitutionally protected expectation of privacy in their registries. Pet. App. 40-43.

4. The Ninth Circuit granted rehearing en banc. One week before oral argument, the court *sua sponte* ordered the parties to be prepared to discuss the relevance of *Sibron v. New York*, 392 U.S. 40 (1968), to respondents' facial challenge. J.A. 2, 260. No doubt prompted by the order, at oral argument the City argued for the first time that the district court should not have accepted the City's invitation to rule on the merits of respondents' facial challenge. *Id.* 280-81.

The en banc court reversed. Pet. App. 14. The court assumed *arguendo* that the ordinance was not a pretext for criminal investigative searches, and therefore did not require a warrant. *Id.* 10. But

despite "giv[ing] the city the benefit of the doubt at each turn," the court nonetheless held the ordinance invalid. *Id.* 11.

Unlike the district court, the court of appeals had "little difficulty" concluding that the inspections authorized by Section 41.49 constituted searches under the Fourth Amendment because they interfere both with respondents' constitutionally protected property interests and with respondents' reasonable expectations of privacy. Pet. App. 6-7. The court then considered whether the searches authorized by Section 41.49 were reasonable. The court acknowledged a narrow exception to the traditional warrant requirement for administrative searches of business records to enforce regulatory, rather than criminal, laws. *Id.* 11-13. But that exception, the court explained, nonetheless required an opportunity for the subject of the search to seek judicial review before having to comply. *Id.* 12 (citing *Donovan v. Lone Steer, Inc.*, 464 U.S. 408, 415 (1984); *See v. City of Seattle*, 387 U.S. 541, 545 (1967)). Because Section 41.49 concededly provides no such opportunity for pre-compliance judicial review, the court held it facially unconstitutional. *Id.* 13.

The majority recognized that *Burger* allowed an even narrower exception to *See*'s requirement of pre-compliance judicial review when the business searched is in a "closely regulated industr[y]." Pet. App. 13 n.2. But in light of the City's failure to submit any record evidence on the question, the court of appeals held that "no serious argument can be made that the hotel industry has been subjected to the kind of pervasive regulation that would qualify it for treatment under the *Burger* line of cases." *Id.*

Neither of the two dissenting opinions disagreed with the majority's rejection of the City's *Burger* defense. Instead, one dissent, relying on *Sibron*, argued that the court's review should have been confined to specific searches and seizures that actually occurred, rather than the ordinance's facial constitutionality. Pet. App. 16-17. A second dissent would have affirmed on the ground that respondents had not established a protected privacy interest in their registries. *Id.* 32-34.

5. The City petitioned for certiorari, seeking review on two questions that, it said, divided the lower courts. First, petitioner asked this Court to decide categorically whether "facial challenges to ordinances and statutes [are] permitted under the Fourth Amendment," Pet. i, emphasizing what it perceived as "fundamentally different conclusions" between the Sixth and Ninth Circuits, *id.* 5. Petitioner stressed the need to settle the "deeply divided" constitutional question of whether "facial challenges are available under the Fourth Amendment." *Id.* 20, 24.

The second question had two parts. Petitioner first asked this Court to decide whether "a hotel [has] an expectation of privacy under the Fourth Amendment in a hotel guest registry where the guest supplied information is mandated by law and that ordinance authorizes the police to inspect the registry," Pet. App. i, citing a conflict between the Ninth Circuit's holding in this case and *Commonwealth v. Blinn*, 503 N.E.2d 25 (Mass. 1987). Pet. 25-26. Petitioner also asked whether, if hotel owners do have an expectation of privacy, Section

41.49 is facially unconstitutional, *id.* i, although it did not allege any circuit conflict on this question.

6. This Court granted certiorari.

SUMMARY OF ARGUMENT

1. Petitioner's writ should be dismissed as improvidently granted because, having induced the Court to grant certiorari to resolve two circuit conflicts, petitioner has filed a brief concluding that the Ninth Circuit was on the right side of both splits. Specifically, although it sought review to resolve whether hotels have a reasonable expectation of privacy in their registries, it does not challenge the Ninth Circuit's conclusion that they do. And although it pointed to a circuit conflict over whether Fourth Amendment facial challenges are *categorically prohibited* (as held by the Sixth Circuit and rejected by the Ninth), it now admits they sometimes are permitted. Rather than address the categorical question at the heart of the circuit split, petitioner spends most of its brief arguing that even if the Fourth Amendment applies to hotel registries and even if facial Fourth Amendment challenges are permitted, this particular facial challenge fails on the merits under *New York v. Burger*, 482 U.S. 691 (1987). But it never even hinted at this argument in its petition, the district court rejected the argument for lack of evidence, and the question is not the subject of a circuit conflict. In these circumstances, the Court should dismiss the petition as improvidently granted, for if the City had been more forthright in its petition, the Court surely would have denied review.

2. Regardless, this Court has repeatedly considered facial Fourth Amendment challenges and the City identifies no good reason to change course now. Indeed, the City admits that the facts of a particular search are irrelevant to some Fourth Amendment challenges. This case presents one such challenge – the Ninth Circuit rightly concluded that a law authorizing searches purportedly to enforce non-criminal regulations must afford an opportunity for pre-compliance judicial review of officials' search demands. The absence of this procedural protection renders Section 41.49 unconstitutional in all of its applications, just as a statute authorizing warrantless searches of homes would be invalid whenever invoked. Petitioner identifies no basis in law or reason why a court should hesitate to declare a statute facially unconstitutional when leaving the statute on the books will only mislead the police and risk infringing citizens' constitutional rights.

3. The City's defense of the ordinance is meritless. It is a "basic rule that 'searches conducted outside the judicial process, without prior approval by judge or magistrate, are *per se* unreasonable under the Fourth Amendment – subject only to a few specifically established and well-delineated exceptions.'" *Arizona v. Gant*, 556 U.S. 332, 338 (2009) (citation omitted). The Court has recognized an exception for certain searches aimed at enforcing administrative regulations, but only if those searches are subject to pre-compliance judicial review, which Section 41.49 does not permit. *See v. City of Seattle*, 387 U.S. 541 (1967); Pet. App. 9-13.

The City thus is forced to invoke an even narrower exception reserved for "pervasively

regulated industries." *Burger*, 482 U.S. at 693. But hotels are not more closely regulated than the panoply of businesses subject to various federal, state, and local laws. Accepting the City's invocation of the pervasively regulated industries exception would allow the exception to swallow the rule.

Even if the *Burger* test applies, the ordinance does not satisfy it. The City has failed to show that the exception is necessary to serve its interests. And the ordinance fails to include any meaningful protections against individual police officers conducting fishing expeditions, including pretextual searches in support of criminal investigations.

In fact, the disconnect between the City's asserted interest in enforcing its recordkeeping requirement and the nearly limitless search authority bestowed by the ordinance shows that the principal purpose of the law is to facilitate ordinary criminal investigation. This Court has been clear that such pretextual search regimes are subject to the ordinary warrant requirement that governs any other criminal search.

4. Running out of options, the City claims that even if Section 41.49 fails every established Fourth Amendment test, it should still be upheld either under ad hoc "reasonableness balancing" or by historical analogue. Neither argument saves the ordinance. First, this Court has already struck the constitutional balance in its regulatory search cases, making a second round of balancing unnecessary. Nor would re-balancing lead to a different result. However strong the City's interest in preventing crimes in some hotels, the City has failed to show that eliminating any form of pre-compliance judicial

review is necessary to advance that interest. At the same time, the City unduly disparages the privacy interests of hotels and their customers.

Finally, the City fails to substantiate its claim that similar searches of private hotel registries were a clearly established, commonly accepted practice in the Founding Era.

ARGUMENT

I. The Court Should Dismiss This Case As Improvidently Granted.

Having obtained review on the promise that the Court could resolve two important circuit splits, petitioner's merits brief takes no side in either conflict. Instead, the City seeks reversal on a theory that the Ninth Circuit barely addressed because petitioner failed to substantiate its factual predicate in the record below. Rather than condone the City's bait-and-switch tactics, the Court should dismiss the writ as improvidently granted.

1. The petition's first Question Presented asks categorically whether "facial challenges to ordinances and statutes [are] permitted under the Fourth Amendment." Pet. i. Petitioner insisted that the decision here conflicted with the law of the Sixth Circuit, which holds such claims categorically unreviewable. *See id.* 7-8 (embracing the view that the "constitutional validity of a warrantless search is preeminently the sort of question which *can only be decided in the concrete factual context of the individual case*") (quoting *Sibron v. New York*, 392 U.S. 40, 59 (1968)).

In its merits brief, however, petitioner abandons that argument, recasting the Question Presented to ask not whether Fourth Amendment facial challenges are categorically prohibited, but rather whether "the Ninth Circuit err[ed] in using a facial challenge to strike [Section] 41.49" *in this case*. Petr. Br. i. Thus, the City now agrees with the Ninth Circuit that "courts are capable of making some Fourth Amendment determinations without any consideration of case-specific facts." *Id.* 28. It argues only that the Ninth Circuit erred in how it conducted the facial analysis in this particular case. *See id.* 18-28. Addressing that fact-bound assertion will not resolve the circuit conflict and would not have warranted this Court's review.

Indeed, this case is an exceptionally poor vehicle to address when courts should exercise their discretion to entertain Fourth Amendment facial challenges. *Cf.* U.S. Br. 21-24. Regardless of whether courts should ordinarily abstain from considering facial Fourth Amendment challenges as a matter of constitutional law or equitable discretion, *see id.* 21-23, the Ninth Circuit was justified in *this* case in deciding the facial challenge. The City agreed that hearing only the facial challenge would simplify the cases and allow the district court to resolve respondents' principal concern – the validity of the ordinance – without the need for individualized trials in as-applied damages actions. *See* J.A. 110. Consequently, respondents agreed to dismiss without prejudice their as-applied challenges. *Id.* 110-11. Had the City even hinted that it reserved the right to dispute the district court's authority to consider the facial claims, respondents would not have agreed to

dismiss their as-applied challenges. Under these circumstances, petitioner has waived any error in the court's deciding the question that the City presented for resolution, and is judicially estopped from contesting the district court's authority to resolve respondents' facial challenge. *See, e.g.*, *United Rys. & Elec. Co. of Balt. v. West*, 280 U.S. 234, 248-49 (1930) (challenge to valuation waived when it "was accepted without question by both parties" below); *cf. New Hampshire v. Maine*, 532 U.S. 742, 749 (2001) (judicial estoppel prohibits a party from "gain[ing] an advantage by litigati[ng] on one theory, and then seek[ing] an inconsistent advantage by pursuing an incompatible theory" (citation omitted)).

2. The City presented a two-part second question. The first part asked whether a hotel has "an expectation of privacy under the Fourth Amendment in a hotel guest registry where the guest supplied information is mandated by law and that ordinance authorizes the police to inspect the registry." Pet. i. Petitioner argued for review in light of a split between the Ninth Circuit and the Massachusetts Supreme Judicial Court. *Id.* 26 (citing *Commonwealth v. Blinn*, 503 N.E.2d 25 (Mass. 1987)). Petitioner now abandons that question, too, conceding that the Fourth Amendment applies to registry searches. *See* Petr. Br. 51 (arguing only that "[h]otels have a *diminished* privacy interest in their guest registers" (emphasis added)).

The second question presented also asked whether Section 41.49 is "facially unconstitutional under the Fourth Amendment unless it expressly provides for pre-compliance judicial review before the police can inspect the registry." Pet. i. In its merits

brief, petitioner principally argues that Section 41.49 satisfies the test for pervasively regulated industries under *New York v. Burger*, 482 U.S. 691 (1987). Petr. Br. 29-47. But petitioner did not make that argument in its cert. petition – which did not even cite *Burger*, *see* Pet. vii-xi (Table of Authorities) – perhaps because it knew there was no circuit conflict over *Burger*'s application to the hotel industry. Or perhaps it hid its intention to rely on *Burger* because the Ninth Circuit had addressed the argument only briefly in footnotes, explaining that the district court had found that the City "submit[ted] no evidence that hotels or motels in California or Los Angeles have been subjected to the same kind of pervasive and regular regulations as other recognized 'closely regulated' businesses." Pet. App. 54; *see id.* 13 n.2 (court of appeals agreeing that "no serious argument can be made that the hotel industry has been subjected to the kind of pervasive regulation that would qualify it for treatment under the *Burger* line of cases"); *id.* 14-34 (en banc dissents) (raising no objection to majority's resolution of the *Burger* claim). Had the City forthrightly asked this Court to review that case-specific and fact-bound determination, the Court surely would have denied certiorari.[5]

The City now seeks a ruling that would leave the circuit conflicts and the petition's principal questions

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[5] The City also failed to argue in its petition or below that the ordinance is constitutional in light of Founding-era historical practice and under ad hoc reasonableness balancing. *Compare* Petr. Br. 47-54, *with* Def. C.A. Br. 6-24, *and* Pet. 25-30.

unresolved, or would require resolving them without adversarial presentation. The City would have the Court either decide whether the Fourth Amendment applies to searches of hotel registries (without briefing the question) or assume that it does for the purposes of this case (in which case a later contrary ruling would render the decision here meaningless). Both results are inappropriate.

Dismissing the petition will also signal to parties that the Court directs its limited resources toward resolving questions that *it* believes warrant review, not issues petitioners elect to brief after the Court grants certiorari.

II. The Ninth Circuit Properly Entertained Respondents' Facial Challenge.

In any event, petitioner and its amici are wrong to suggest that the Fourth Amendment is peculiarly ill-suited to facial challenges or that the Ninth Circuit erred in adjudicating the challenge in this case.

While facial challenges may be "disfavored," this Court has squarely held that they may be sustained when the strict standard for facial invalidation is met. *United States v. Salerno*, 481 U.S. 739, 745 (1987). Accordingly, the Court has entertained such challenges under a diverse range of constitutional provisions, including those that, like the Fourth Amendment, require balancing state and private interests. *See, e.g.*, *Romer v. Evans*, 517 U.S. 620, 625, 634-35 (1996) (Fourteenth Amendment challenge to a state constitutional amendment prohibiting ordinances protecting against sexual orientation discrimination); *Kraft Gen. Foods, Inc. v.*

Iowa Dep't of Revenue & Fin., 505 U.S. 71, 81-82 (1992) (Foreign Commerce Clause challenge to a state tax provision); *Mathews v. Eldridge*, 424 U.S. 319, 339-49 (1976) (Due Process Clause challenge to administrative scheme's procedural protections).

The Fourth Amendment is no exception to this rule. In fact, this Court has repeatedly declared facially invalid laws authorizing unreasonable searches and seizures. In *Chandler v. Miller*, 520 U.S. 305, 309 (1997), for instance, candidates for public office challenged a Georgia statute requiring all candidates to pass a drug test. The Court held the law unconstitutional on its face because drug tests "d[id] not fit within the closely guarded category of constitutionally permissible suspicionless searches." *Id.*; *see also, e.g.*, *Ferguson v. City of Charleston*, 532 U.S. 67, 85-86 (2001) (facially invalidating a program authorizing warrantless drug testing of pregnant mothers); *Payton v. New York*, 445 U.S. 573, 576 (1980) (striking down a statute that allowed police to make warrantless arrests inside arrestee's home); *Torres v. Puerto Rico*, 442 U.S. 465, 467-68, 474 (1979) (striking down a statute that authorized warrantless luggage searches); *Marshall v. Barlow's, Inc.*, 436 U.S. 307, 325 (1978) (invalidating a statutory provision allowing OSHA inspectors to conduct warrantless searches); *cf. Skinner v. Ry. Labor Execs.' Ass'n*, 489 U.S. 602 (1989) (deciding the facial validity of regulations authorizing drug tests of railroad employees). Although the Court did not describe all of these cases as facial challenges, they are properly regarded as such because in each case the Court held the statute invalid in all its applications, not simply on the facts of the case

before it. *See, e.g.*, *Citizens United v. Fed. Election Comm'n*, 558 U.S. 310, 331 (2010) (explaining that the distinction between facial and as-applied challenges hinges on "the breadth of the remedy employed by the Court, not what must be pleaded in a complaint").

To the extent petitioner and its amici ask this Court to abandon these precedents and adopt a rule limiting Fourth Amendment challenges to particular searches without any possibility of broader relief, they would prevent the Court from addressing blatant constitutional violations. Under petitioner's rule, this Court could not facially invalidate a statute providing across-the-board authority for warrantless searches of homes, suspicionless strip searches of schoolchildren, or the very general warrants the Fourth Amendment was enacted to prohibit, *see Riley v. California*, 134 S. Ct. 2473, 2494 (2014). And all for no conceivable purpose: as the Chief Justice has noted, "whether [the Court] label[s] [a] claim a 'facial' or 'as-applied' challenge, the consequences of the Court's decision are the same" if the Court's holding would render every application of the statute unconstitutional. *Citizens United*, 558 U.S. at 376 (Roberts, C.J., concurring); *see also Sec'y of State of Md. v. Joseph H. Munson Co.*, 467 U.S. 947, 965 n.13 (1984) ("[T]here is no reason to limit challenges to case-by-case 'as applied' challenges when the statute on its face and therefore in all its applications falls short of constitutional demands."). When a statute is unconstitutional in all its applications, refusing to say so leaves a law on the books that can never be applied lawfully, setting a trap for unwary police officers and posing a serious risk to the constitutional

rights of ordinary citizens. At the same time, it guarantees a flood of future as-applied challenges and risks inconsistent rulings in the lower courts.

This Court's decision in *Sibron v. New York*, 392 U.S. 40 (1968), is not to the contrary. In *Sibron*, the defendants challenged the constitutionality of a statute that authorized police to "stop any person abroad in a public place whom [they] reasonably suspect[] is committing, has committed or is about to commit a felony" and provided that, when an officer "reasonably suspects that he is in danger of life or limb, he may search such person for a dangerous weapon." 392 U.S. at 43-44. This Court decided whether the petitioners' individual searches violated the Fourth Amendment, but declined to go further. *See id.* at 62-63, 66. In a sentence upon which the City heavily relies, the Court concluded that applying the petitioners' particular Fourth Amendment objections to other applications of the statute would require the "abstract and unproductive exercise of laying the extraordinarily elastic categories of [the statute] next to the categories of the Fourth Amendment in an effort to determine whether the two are in some sense compatible." *Id.* at 59.

This sentence cannot bear the weight petitioner and its amici place upon it. The Court merely identified a particular circumstance in which it was impracticable to resolve a broad challenge to a "peculiar" statute, because the statute's terms were indeterminate. *See id.* at 61-62. But *Sibron* did not announce a general rule against facial challenges. If it had, then this Court never could have considered *Skinner*, *Chandler*, *Ferguson*, *Torres*, *Payton*, or *Barlow's*. If there were any doubt, the next sentence

of the *Sibron* opinion resolves it. The Court explained that a facial challenge *would* be appropriate to test "the adequacy of the procedural safeguards written into a statute." *Id.* at 59 (citing *Berger v. New York*, 388 U.S. 41 (1967)). Here, of course, the lack of procedural safeguards is precisely what respondents challenge.

Sibron itself thus explains why the en banc dissenters were wrong to suggest that all Fourth Amendment facial challenges should be barred because they turn on search-specific facts. Pet. App. 15-16. Their reasoning ignores the many *per se* rules that govern Fourth Amendment cases. *See, e.g.*, *United States v. Place*, 462 U.S. 696, 701 (1983) ("In the ordinary case, this Court has viewed a seizure of personal property as *per se* unreasonable unless it is accomplished pursuant to a judicial warrant issued upon probable cause and particularly describing the items to be seized."); *Katz v. United States*, 389 U.S. 347, 357 (1967) ("[S]earches conducted outside the judicial process, without prior approval by a judge or magistrate, are per se unreasonable under the Fourth Amendment – subject only to a few specifically established and well-delineated exceptions."); *Barlow's*, 436 U.S. at 325 (holding that warrantless regulatory searches require pre-compliance judicial review). The Court established these *per se* Fourth Amendment protections to give concrete guidance to the police and avoid turning the constitutionality every disputed search into an ad-hoc reasonableness debate.

Even when the Court considers whether a statute is "reasonable" under the Fourth Amendment, it does not do so solely or even primarily

by reference to a single case's factual context.[6] Instead, it evaluates features of the statute that do not vary from case to case. In *Ferguson v. City of Charleston*, for example, the Court considered the constitutionality of a policy that subjected pregnant women to warrantless drug testing. 532 U.S. at 69-71. The Court did not analyze whether it was reasonable to conduct tests on the ten women who challenged the policy; in fact, it did not even describe the individualized circumstances under which they were tested. *Id.* at 73. Instead, it considered general features of the policy and the privacy interests at stake. *Id.* at 78.

Likewise, because the issue here is whether Section 41.49 provides adequate procedural safeguards, no further facts are necessary. The record here[7] details the City's construction of the

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[6] Of course, because every plaintiff raising a facial challenge must establish standing under Article III, every facial challenge will arise from a particular concrete factual context. *See, e.g.*, *Clapper v. Amnesty Int'l USA*, 133 S. Ct. 1138 (2013); *City of Los Angeles v. Lyons*, 461 U.S. 95, 101-02 (1983). The extent to which parties present evidence regarding how the statute has been applied in practice will depend on the nature of the constitutional claim and the litigation choices of the parties. In this case, for example, the City had every opportunity to present additional evidence at trial to substantiate the need for the extraordinary features of its ordinance, but chose not to do so. That litigation decision, however, cannot insulate the ordinance from facial review.

[7] The 2008 pre-trial order provides that LAMC Section 41.49 will be the only exhibit in the trial. J.A. 199. However, there are other documents in the record that the Court could consider if it deemed them relevant.

ordinance,[8] how it may be enforced,[9] the function and practical use of registration information for hotel owners,[10] and respondents' injuries.[11] On these facts, the Court has enough information to conclude that Section 41.49 is unconstitutional in all of its applications. *See infra* Parts III-IV.

Second, petitioner and some amici argue that facial challenges cannot be raised against statutes under the Fourth Amendment because the Fourth Amendment only constrains executive action. Petr. Br. 26-27; Br. of Amicus Curiae Manhattan Institute for Policy Research 10-14. But nothing in the text of the Fourth Amendment limits its application to executive officials. In plain terms, the Amendment creates a right – "the right of the people to be secure" against unreasonable searches and seizures – that "shall not be violated." U.S. Const. amend IV. It is like many other constitutional provisions that guarantee rights instead of restricting particular branches, such as the Second Amendment (right to bear arms), the Fifth Amendment (due process; protection from double jeopardy and self-incrimination), the Sixth Amendment (speedy and public trial;

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[8] *Id.* 194-95 (stipulation that Section 41.49 authorizes searches without consent or a warrant).

[9] *Id.* 115-16 (declaration describing an LAPD officer's experience enforcing Section 41.49).

[10] *Id.* 145 (testimony about the purpose and uses of registry cards).

[11] *Id.* 194 (stipulation that respondents have been "subject to searches and seizures . . . without consent or warrant").

trial by jury), and the Eighth Amendment (protection from cruel and unusual punishment).

This Court has considered facial challenges to statutes that interfere with such rights. *See Boyd v. United States*, 116 U.S. 616, 638 (1886) (finding forced production of a business invoice violated the Fourth and Fifth Amendments and holding "the law which authorized the order unconstitutional"); *Skinner*, 489 U.S. at 632 n.10 (considering the constitutionality of a mandatory drug testing scheme under the Fourth Amendment "on its face"); *Salerno*, 481 U.S. at 741, 752 (considering the facial validity of the Bail Reform Act under the Fifth and Eighth Amendments). If the Court adopted petitioner's and amici's argument, it would be restricted from even considering the facial constitutionality of statutes under any of those constitutional provisions, and from granting relief even when there is no set of circumstances in which the challenged statute could be constitutionally applied.[12]

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[12] Such direct challenges to statutes authorizing unreasonable searches and seizures predate the Fourth Amendment. In *Paxton's Case*, 1 Quincy 51 (Mass. 1761), for example, the Massachusetts Superior Court heard arguments against writs of assistance authorizing "house-to-house searches" that had been issued in favor of British customs agents, not against the searches conducted pursuant to those writs. WILLIAM J. CUDDIHY, THE FOURTH AMENDMENT: ORIGINS AND ORIGINAL MEANING 602-1791, at 380-81 (2009). James Otis, representing an association of prominent merchants from Boston and Salem, argued that "where an Act of Parliament is against Common Right and Reason or repugnant or impossible to be performed, the Common Law will controul [sic] it and adjudge it to be void." *Id.* at 385, 388. Although that court

III. The Ordinance Is Unconstitutional On Its Face.

The Ninth Circuit correctly held that Section 41.49 violates the Fourth Amendment. Ordinarily, "a search is not reasonable unless it is accomplished pursuant to a judicial warrant issued upon probable cause." *Skinner v. Ry. Labor Execs.' Ass'n*, 489 U.S. 602, 619 (1989). This Court has recognized a narrow exception for certain searches aimed at enforcing regulations. *See v. City of Seattle*, 387 U.S. 541 (1967). Such searches are constitutional only if they are subject to "judicial review of the reasonableness of the demand prior to [the imposition of] penalties for refusing to comply," and if they are conducted for a non-criminal purpose. *Id.* at 544-45. Section 41.49 neither permits pre-compliance judicial review, nor falls within the narrow exception to that requirement applicable to certain "pervasively regulated" industries. *New York v. Burger*, 482 U.S. 691, 701-03 (1987). Instead, the ordinance is a pretext for avoiding the warrant requirement in conducting ordinary criminal searches. These systemic procedural defects render Section 41.49 unconstitutional in all its applications.

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ultimately approved the issuance of the writs, the case "intensified public antipathy to the writs of assistance and revealed the breadth and depth of that antipathy." *Id.* at 395.

A. The Fourth Amendment Requires An Opportunity For Pre-Compliance Judicial Review Before The Government Can Conduct A Regulatory Search.

1. The Fourth Amendment generally requires a warrant to address the Founders' fundamental "concern about giving police officers unbridled discretion to rummage at will among a person's private effects." *Arizona v. Gant*, 556 U.S. 332, 345 (2009). The warrant requirement "interpose[s] a neutral magistrate between the citizen and the law enforcement officer." *Nat'l Treasury Emps. Union v. Von Raab*, 489 U.S. 656, 667 (1989). In addition, by requiring that the warrant "particularly describe[] the place to be searched, and the persons or things to be seized," the Fourth Amendment seeks to safeguard against "exploratory rummaging in [that] person's belongings," including her papers. *Coolidge v. New Hampshire*, 403 U.S. 443, 467 (1971) (plurality). In combination, these requirements ensure that the decision whether, and how, to invade a person's privacy is not made by officers in the field "engaged in the often competitive enterprise of ferreting out crime." *Johnson v. United States*, 333 U.S. 10, 14 (1948); *see also United States v. U.S. Dist. Court*, 407 U.S. 297, 317 (1972).

This Court has recognized, however, that the basic purposes of the warrant requirement can be satisfied through other means in a "closely guarded" set of circumstances. *Chandler v. Miller*, 520 U.S. 305, 309 (1997). Most relevant here, the Court has developed a different set of restrictions applicable to searches designed to achieve "special needs" other

than criminal enforcement, including searches to enforce regulations. *Id.* at 313.

That exception was first recognized in *See v. City of Seattle*, 387 U.S. at 544. There, city officials attempted to enter a warehouse to conduct a building code inspection. *Id.* at 541. As in this case, the city ordinance required neither a warrant nor any basis to suspect a violation. *Id.* Likewise, as in this case, the ordinance imposed no meaningful restrictions on officials' discretion over which businesses to search. *Id.* Nor, as in this case, did Seattle provide an opportunity for any type of pre-compliance judicial review of inspection demands. *Id.* Instead, as here, refusal to consent was a crime. *Id.* at 542 n.1.

This Court recognized that "[o]fficial entry upon commercial property is a technique commonly adopted by administrative agencies at all levels of government to enforce a variety of regulatory laws." *See*, 387 U.S. at 543-44. Addressing the Fourth Amendment's application to this context for the first time, the Court concluded that a warrant and probable cause were not required, but that the search regime must functionally reproduce the warrant requirement's two constraints on police discretion.

First, the Court held that the law must provide substantial restrictions on officials' discretion regarding the subject and scope of the search. *See*, 387 U.S. at 544. Specifically, the Court held that "the decision to enter and inspect [may] not be the product of the unreviewed discretion of the enforcement officer in the field." *Id.* at 545. For example, in a companion case involving housing code inspections, the Court suggested that rather than allowing individual inspectors to decide which buildings to

inspect, an ordinance might apply ex ante standards "based upon the passage of time, the nature of the building (*e.g.*, a multifamily apartment house), or the condition of the entire area." *Camara v. Mun. Court*, 387 U.S. 523, 538 (1967).

Second, the Court held that, absent exigent circumstances, the subject of the search must be able to "obtain judicial review of the reasonableness of the demand prior to suffering penalties for refusing to comply." *See*, 387 U.S. at 545; *Camara*, 387 U.S. at 539.

While the United States expresses befuddlement over what judicial review would accomplish in this context, *see* U.S. Br. 33, this Court has made clear the important but reasonable inquiry the magistrate would undertake to ensure that searches conducted pursuant to such special needs exceptions "are not the random or arbitrary acts of government agents." *Skinner*, 489 U.S. at 622. First, the magistrate must confirm compliance with the statutory limits on the official's authority. *Camara*, 387 U.S. at 538. Second, the magistrate ensures that the search complies with the Fourth Amendment. *Id.* at 538-39; *see also United States v. Chadwick*, 433 U.S. 1, 8-9 (1977). That means, for one thing, that the search must be "sufficiently limited in scope, relevant in purpose, and specific in directive so that compliance will not be unreasonably burdensome." *See*, 387 U.S. at 544. It also means that the search must not be a pretext for harassment or criminal investigation. *See, e.g.*, *Terry v. Ohio*, 392 U.S. 1, 15 (1968); *U.S. Dist. Court*, 407 U.S. at 316-17.

The modern administrative state has existed comfortably with "these rather minimal limitations

on administrative action" for nearly half a century. *See*, 487 U.S. at 545. Indeed, Congress has enacted a broad range of regulatory regimes that comply with these Fourth Amendment limitations, and neither petitioner nor the United States suggests that the government has been unable to advance its regulatory interests while complying with the law. *See, e.g.*, Veterans Employment Opportunities Act of 1998, 5 U.S.C. § 3330a(b); Consumer Product Safety Act, 15 U.S.C. §§ 2076(b)(3)-(4), 2076(c); Federal Energy Administration Act of 1974, 15 U.S.C. § 772(e); Federal Trade Commission Act, 15 U.S.C. § 49; Toxic Substances Control Act, 15 U.S.C. §§ 2610(a), 2616; Higher Education Act of 1965, 20 U.S.C. § 1097a; Occupational Safety and Health Act, 29 U.S.C. § 657; Uniformed Services Employment and Reemployment Rights Act of 1994, 38 U.S.C. § 4326(b); 41 U.S.C. § 610 (subpoena authority of agency boards of contract appeals); Atomic Energy Act of 1954, 42 U.S.C. § 2201(c); Clean Air Act Amendments of 1990, 42 U.S.C. § 7412(r)(6)(L)(i); 10 U.S.C. § 2313(b) (subpoena authority of the Defense Contract Audit Agency).

2. Applying these principles, the en banc Ninth Circuit correctly held that Section 41.49 violates the Fourth Amendment. The court of appeals acknowledged that under the more "lenient" Fourth Amendment standards for administrative regulatory searches, Pet. App. 11, the ordinance "need not require issuance of a search warrant" in order "to be reasonable," *id.* 9. But, consistent with this Court's longstanding precedents, the Ninth Circuit held that "at a minimum," that search regime must "afford an

opportunity for pre-compliance judicial review, an element that § 41.49 lacks." *Id.* 9-10.

B. The Pervasively Regulated Industries Exception Is Inapplicable.

Because *See* and its progeny plainly prohibit Section 41.49's regime of warrantless, suspicionless searches without pre-compliance judicial review, petitioner attempts to shoehorn the ordinance into the "closely guarded category of constitutionally permissible suspicionless searches," *Chandler*, 520 U.S. at 309, reserved for "pervasively regulated industries," *Burger*, 482 U.S. at 693. To qualify for the exception, in addition to being "pervasively regulated," the search regime must satisfy three additional criteria: (1) "there must be a 'substantial' government interest that informs the regulatory scheme pursuant to which the inspection is made"; (2) "the warrantless inspections must be 'necessary to further [the] regulatory scheme'"; and (3) "the statute's inspection program, in terms of the certainty and regularity of its application, [must] provid[e] a constitutionally adequate substitute for a warrant." *Id.* at 701-03 (alterations in original) (citations omitted). Petitioner bears the burden of meeting each prong, including the particularly exacting standard of "necessity." *See United States v. Jeffers*, 342 U.S. 48, 51 (1951) ("the burden is on those seeking the exemption to show the need for it"); *New Jersey v. T.L.O.*, 469 U.S. 325, 356 (1985) (Brennan, J., concurring in part and dissenting in part) (defining "necessity" in the context of other "special needs" exceptions as when doing otherwise is "impossible" or "hopelessly infeasible").

Petitioner's invocation of the pervasively regulated industries exception, Petr. Br. 29-47, is misplaced. Hotels are not pervasively regulated, and in any event, Section 41.49 cannot satisfy either the necessity or the warrant-substitute requirement.

1. Hotels Are Not "Pervasively Regulated."

The pervasively regulated industry exception applies only in "relatively unique circumstances." *Marshall v. Barlow's, Inc.*, 436 U.S. 307, 313 (1978); *Burger*, 482 U.S. at 701 (describing the "narrow focus" of the exception). In the past forty-five years, this Court has found the exception applicable only with respect to four industries, each of which presented unusual risk of harm to the public. *See Colonnade Catering Corp. v. United States*, 397 U.S. 72 (1970) (liquor industry); *United States v. Biswell*, 406 U.S. 311 (1972) (firearm and ammunitions sales); *Donovan v. Dewey*, 452 U.S. 594 (1981) (mining); *Burger*, 482 U.S. 691 (automobile junkyards).

At the same time, the Court has resisted interpretations of the exception that would apply to broad swaths of the business community. *See Barlow's*, 436 U.S. at 313-14. And for good reason: it is easy enough for the government to assert that a wide range of industries are "pervasively regulated," and it has every incentive to do so because those industries frequently maintain records that would be helpful to law enforcement in conducting routine criminal investigations for which it would ordinarily have to seek a warrant (or at least, under *See*, submit to pre-compliance judicial review). For example, the police often would like to track suspects' movements, *see* U.S. Br. 26-27, and it is plausible to claim that

rental car companies, gas stations, subway systems, and taxis are closely regulated industries. *Cf. United States v. Jones*, 132 S. Ct. 945 (2012); *United States v. Knotts*, 460 U.S. 276 (1983). Likewise, the police will frequently want to know where a person spends her time, and apartment rental companies, public housing, psychiatrists' offices, nursing homes, day cares, gyms, and most employers are subject to regulation from a variety of sources. Law enforcement is often critically interested in obtaining suspects' communications, *cf. Riley v. California*, 134 S. Ct. 2473 (2014); *Katz v. United States*, 389 U.S. 347 (1967), and the telecommunications industry is one of the most highly regulated in the country. *See, e.g.*, 47 C.F.R. §§ 24.1-24.839.

Accordingly, the test for what counts as a pervasively regulated industry is necessarily strict. An industry is pervasively regulated only when there exists "such a history of government oversight that no reasonable expectation of privacy could exist for a proprietor over the stock of such an enterprise." *Barlow's*, 436 U.S. at 313. Thus, the inquiry turns on "the pervasiveness and regularity of the federal regulation," *Dewey*, 452 U.S. at 606. Those entering an industry in which government inspectors are an ever-present fact of life may not retain a significant expectation of privacy in the facilities and documents subject to that regular regulatory review. *See id.*

The City argues that hotels are pervasively regulated within the meaning of this exception because they are subject to a hodge-podge of regulations ranging from general licensing, false advertising, and non-discrimination requirements that apply to any business, to conservation and

environmental measures that apply to a broad subset of the business community. *See* Petr. Br. 33-34. That view, if accepted, would take the narrow exception and "make it the rule." *Barlow's*, 436 U.S. at 313. Nearly every business in the United States is subject to a comparable patchwork of broadly applicable federal, state, and local regulations. But an industry is not closely regulated simply because it must comply with a variety of laws. The critical question is whether the industry expects to be subject to regular, ongoing searches under a comprehensive regulatory regime. *See, e.g.*, *id.* at 313-14.

The alleged pervasive regulation in this case thus stands in marked contrast with the regulatory regimes addressed in the Court's prior cases. For example, unlike the comprehensive regulatory system enforced by federal mining inspectors in *Dewey*, 452 U.S. at 596, the alleged pervasive regulation in this case is undertaken by an assortment of city agencies, none of which administers Section 41.49, which is enforced only by the police.[13]

In addition, the pervasive regulatory regime alleged by the City lacks the necessary "regularity" of

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[13] The City suggests that hotels are subject to strict licensing requirements comparable to those at issue in the Court's prior cases. *See* Petr. Br. 32. But its citations support no such comparison. *See id.* (citing the requirement that hotels – like churches, day cares, schools, and theaters – must obtain an operational permit from the fire department); *see also id.* (citing requirement of a Transient Occupancy Registration Certificate, which is simply a means for the City to collect the transient occupancy tax, *see* LAMC §§ 21.1.1-21.17.5).

inspection to support any claim that the hotel owners have the especially diminished expectation of privacy required for the exception. In *Dewey*, this Court explained that consistent and regular inspections can "establish a predictable and guided federal regulatory presence" that may diminish privacy expectations to the point that the protections for regulatory searches no longer apply. *Dewey*, 452 U.S. at 596. On the other hand, the Court explained, "warrantless inspections of commercial property may be constitutionally objectionable if their occurrence is so random, infrequent, or unpredictable that the owner, for all practical purposes, has no real expectation that his property will from time to time be inspected by government officials." *Id.* at 599.

Here, the City does not claim that any of the laws it cites other than Section 41.49 are regularly enforced through on-site searches that could vitiate hotel owners' otherwise established expectation of privacy in their business records. To the contrary, as far as the City has demonstrated, the only searches conducted at hotels – and certainly the only allegedly regulatory searches conducted *by the police* – are those authorized by this ordinance. And the City has not proven that even *those* searches are sufficiently regular and frequent to warrant applying the pervasively regulated industry exception. Unlike the statute in *Dewey*, for example, the ordinance itself makes no provision for a regular schedule of inspection. *See* 452 U.S. at 596. As far as the law is concerned, officers may visit respondents' hotels every day for a year without setting foot in the vast majority of hotels subject to the recordkeeping requirement. Moreover, the City has placed no

evidence in the record suggesting that the searches actually conducted are anything other than the random, infrequent, and unpredictable pattern of inspections this Court held insufficient in *Dewey*. *See id.* at 599.

The district court thus was entirely correct in concluding that the City had failed to establish that Los Angeles hotels are pervasively regulated. The Court can overturn that ruling only if it adopts a standard that will be incapable of principled limits and that renders the justification for the exception a sham. If a law authorizing the police to rummage through a business's records can, in itself, establish the basis for a "pervasively regulated" industry exception, then the justification for the exception will be founded on only "the most fictional sense of voluntary consent." *Barlow's*, 436 U.S. at 314.

2. Section 41.49 Does Not Satisfy The Test Applied To Pervasively Regulated Industries.

Even if the Court holds that Los Angeles hotels are pervasively regulated, Section 41.49 does not meet the applicable test for two reasons. First, the City has failed to demonstrate that dispensing with the ordinary opportunity for pre-compliance judicial review is "necessary to further [the] regulatory scheme." *Burger*, 482 U.S. at 702. Second, the ordinance does not sufficiently limit the discretion of the officer in the field to provide "a constitutionally adequate substitute for a warrant." *Id.* at 702-03.

a. Necessity. No one contests the City's right to impose the recordkeeping requirement of Section 41.49, or to inspect these records after complying

with appropriate safeguards. The Fourth Amendment question thus is not whether *record-keeping* is necessary to deter crime, or whether inspections generally are necessary to ensure that hotel owners keep proper records. Rather, the question is whether the kind of inspection authorized by Section 41.49 – which eliminates the traditional requirement of an opportunity for pre-compliance judicial review – is necessary to enforce the recordkeeping requirement. It is not.

One could understand an argument that allowing pre-compliance judicial review would be inconvenient if the searches were intended to assist the police in catching drug dealers, prostitutes, or their customers. But that is not the City's claim, as it would require admitting that the ordinance is an unconstitutional pretext for criminal investigation. *See infra* Part III.C. Instead, petitioner's argument is that eliminating pre-compliance judicial review is necessary to further the non-criminal purpose of ensuring that hotel owners keep proper records. Petr. Br. 37-41.[14]

That argument is implausible. Myriad federal and state recordkeeping regulations are successfully enforced even while providing an opportunity for pre-

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[14] When LAPD wishes to inspect a registry as part of a criminal investigation, it has the whole range of law enforcement tools at its disposal: it may obtain a warrant, quickly via telephone when needed, *see Missouri v. McNeely*, 133 S. Ct. 1552 (2013), dispense with the warrant in exigent circumstances, *Schmerber v. California*, 384 U.S. 757, 770-71 (1966), or invoke any of the other "well-delineated exceptions" to the warrant requirement, which apply to hotels as well as in homes. *Gant*, 556 U.S. at 338; *see, e.g.*, *Jeffers*, 342 U.S. at 51.

compliance judicial review. *See supra* p. 28. The City must explain what is special about its recordkeeping requirement, or the context in which it is enforced, that makes an extraordinary exception to traditional Fourth Amendment rules "necessary." This, the City has failed to do.

For example, petitioner argues that permitting pre-compliance judicial review would give hotel owners the opportunity to complete or falsify records, thereby evading detection of their violations of Section 41.49. But if that is true, it is true of *all* recordkeeping requirements. And, in fact, it is not true.

To start, if officers have a genuine basis to believe that evidence will be altered or destroyed, they may seize and hold the registry without searching it pending judicial review. *See Camara*, 387 U.S. at 539 (exigency exceptions apply in non-criminal searches); *Riley v. California*, 134 S. Ct. 2473, 2486 (2014) (police may seize and hold cell phone pending search warrant to prevent destruction of evidence); *Illinois v. McArthur*, 531 U.S. 326, 331-33 (2001) (officers may seize property or suspect to prevent destruction of evidence pending issuance of a warrant). Seizing the record to prevent destruction of evidence may be necessary to ensure proper records are kept, but searching the registry would not. *See United States v. Chadwick*, 433 U.S. 1, 15 (1977) (finding necessary the impounding of a locked footlocker to prevent destruction of property, but not the warrantless search of the footlocker's contents). Or, of course, the police may seek an *ex parte* warrant authorizing a surprise inspection. *See Barlow's*, 436 U.S. at 316-20; *see also* WAYNE R. LAFAVE, SEARCH &

SEIZURE: A TREATISE ON THE FOURTH AMENDMENT § 10.2(d) n.95 (5th ed. 2012).[15]

In any event, often the "element of surprise" will not even be necessary. For example, at oral argument before the en banc court, counsel for petitioner explained that the LAPD routinely demands access to a hotel's records after an officer witnesses a hotel owner improperly recording a guest's information, for example, by failing to make any entry at all. J.A. 282-83. But in this scenario, the officer does not need to inspect the registry (much less thumb through its entire contents), having already witnessed a citable violation.

Likewise, in other circumstances, hotel owners who fail to keep proper records will be unable to evade detection even if permitted to challenge the search before a magistrate. For example, the delay in seeking judicial review would afford a hotel owner who has not kept any registry no realistic opportunity to create ninety days' worth of false records. *Cf. Burger*, 482 U.S. at 694-95 (owner unable to produce any logbook at all).

Perhaps it might be possible to fabricate entries covering a shorter period of time. But, to the extent the police are able to determine whether records are accurate – by, for example, comparing the registry

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[15] These options are especially appropriate here given that this ordinance is enforced by the police. *Cf. Skinner*, 489 U.S. at 623 (expressing concern that requiring a warrant would be infeasible when the search is conducted by non-law enforcement personnel).

entries to officer's notes of the "license plates of the cars in the parking lot," Petr. Br. 39 – a hotel will not evade liability even if it is able to backfill the registry with made-up entries.[16] For example, even if the hotel owner attempted to go into the parking lot and write down all the numbers of the cars then in the lot (which the police could prevent her from doing, *see supra* p. 36), she would not be able to match the license number with the actual guest (although the police, through Department of Motor Vehicles records, could). And the police could make this sort of evasion even more difficult by taking note of the license plates and returning a day or two later, when the cars that should have been recorded in the registry likely would have left the lot.

For the same reason, delay will not help the hotel owner who includes false information on an ongoing basis – *e.g.*, making up names as guests check in. When the police arrive to conduct spot checks with correct information, the fabrication will be apparent. Conversely, if the police have made no effort to determine what *should* be in the registry – if they simply show up and thumb through the records – then dispensing with pre-compliance judicial review will serve no purpose, as they will have no way of knowing if the registry is accurate with or without the element of surprise.

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[16] It is unclear in any event how this procedure could actually detect violations, given that the ordinance requires hotels to document the vehicle of the person who rents the room, not the vehicles of hotel guests' visitors or others who may, for various reasons, be parked in the hotel lot.

Finally, the City has failed to substantiate any claim that there is a recordkeeping problem in need of this extraordinary solution. To be sure, the City talks at length about the problem of crime in *some* of the city's hotels (although the ordinance applies broadly to all hotels, including, for example, the Four Seasons). But the ordinance must be justified as a means to enforce the recordkeeping requirement, not as a general crime control measure. The question is whether the City has demonstrated a real problem of recordkeeping violations that would evade detection under ordinary Fourth Amendment standards. The City points to no such evidence, having elected to present no evidence at all in defense of the ordinance. *Cf. Chandler*, 520 U.S. at 319-20 (invalidating a drug test for political candidates where there was no sufficient showing of a drug problem among candidates).[17]

In fact, hotel owners like respondents have little incentive to falsify records or to allow criminals to stay in their hotels. Criminals drive away legitimate customers, cause property damage, and present a danger to hotel owners, some of whom live on the property. And hotel owners often have an independent interest in accurate records, such as for

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[17] The City cannot blame this lack of evidence on respondents' choice to bring a facial challenge. Nothing prevented the City from submitting evidence establishing the statute's necessity; its lawyers simply elected not to do so. Nor would the evidence required have varied from search to search, making as-applied litigation preferable.

tax or insurance purposes, or as proof of the value of their business if the hotel is sold. *See* J.A. 145.

b. Limits on Discretion. In furtherance of the Fourth Amendment's core purpose of preventing a "fishing expedition for evidence of unidentified criminal activity," *Messerschmidt v. Millender*, 132 S. Ct. 1235, 1256 (2012) (Sotomayor, J., dissenting), the closely regulated industries exception retains the general Fourth Amendment requirement that a search unsupported by probable cause and a warrant must "limit the discretion of the inspecting officers" in a manner sufficient to "provide a constitutionally adequate substitute for a warrant." *Burger*, 482 U.S. at 703. For example, in *Dewey*, the Court approved a warrantless inspection scheme under the federal Mine Safety and Health Act because the statute and its implementing regulations required inspection of all underground mines at least four times per year and required specific follow-up after finding certain violations, rather than leaving the choice of whom to inspect to officials in the field. 452 U.S. at 603-04; 30 C.F.R. §§ 100.1-100.5.[18]

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[18] The Court has required similar limitations in other special needs cases. *See, e.g.*, *Skinner*, 489 U.S. at 622 (upholding warrantless drug testing for *all* federal railroad employees after a crash, given "the standardized nature of the tests and the minimal discretion vested in those charged with administering the program"); *Nat'l Treasury Emps. Union*, 489 U.S. at 667 (upholding drug testing program for every applicant for certain positions under the "special needs" exception); *Vernonia Sch. Dist. 47J v. Acton*, 515 U.S. 646, 650 (1995) (upholding randomized drug testing of student-athletes); *Camara*, 387 U.S. at 538 (upholding a warrantless building

Section 41.49 fails to comparably limit officers' discretion. The ordinance does not limit an officer's discretion to decide which hotels to inspect or how often to inspect them. *See* LAMC § 41.49. Nor does it limit the officer's review of the information in the registry – an officer is permitted to peruse those private records at will, whether he is searching for recordkeeping violations, looking for the names of criminal suspects or fugitives, or merely curious about who is staying in the hotel. *See id.* This permits exactly the kind of "general rummaging in order to discover incriminating evidence" that the Fourth Amendment prohibits. *See Whren v. United States*, 517 U.S. 801, 811 (1996).

To be sure, as the City notes, it could be worse. The ordinance limits officers to rummaging through the hotel's registry, and suggests that officers try to do so at convenient times. Petr. Br. 45-46. But these arguments miss the point. These restrictions do nothing to address the core Fourth Amendment flaw, which is the lack of any meaningful constraint on officers' discretion regarding whom to search, how frequently to inspect, and what information to review.[19]

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inspection regime where inspectors enter *all* buildings in a designated area).

[19] In addition, the vagueness of Section 41.49's limitations on the timing of searches – requiring the police are to conduct inspections "at a time and in a manner that minimizes any interference" with the hotel's business operation, "[w]henever possible" – render its protections largely illusory. *See Mincey v. Arizona*, 437 U.S. 385, 394-95 (1978) (noting that these sorts of vaguely worded "guidelines . . . confer unbridled discretion upon

3. *This Case Is Distinguishable From* Burger.

Petitioner is left then to argue that despite these failures, its ordinance is no worse a fit with the pervasively regulated industry exception requirements than the junkyard inspection ordinance in *Burger*. *See* Petr. Br. 30-33, 42-46. That argument is understandable, as *Burger* surely represents the outer boundary of the exception. *See, e.g.*, John C. Yoo, *BCW Treaties and the Constitution*, *in* THE NEW TERROR 269, 283 (Sidney D. Drell et al. eds., 1999) (noting that "*Burger* establishes the farthest that government officials can go in the context of warrantless searches"). The comparison nonetheless fails for several reasons.

First, the vehicle disassembly companies in *Burger* were subject to a comprehensive, pervasive regulatory regime entirely unlike the grab-bag of unrelated laws the City points to here. In *Burger*, for example, Section 415-a of the New York Vehicle and Traffic Laws not only required the keeping of a logbook, but also established stringent licensing requirements. The law required the Commissioner of the Department of Motor Vehicles to determine whether each applicant was a "fit person[] to engage in such business," *Burger*, 482 U.S. at 704 n.15, which was determined based on an application listing all convictions and arrests "relating to the illegal sale or possession of a motor vehicle or motor vehicle

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the individual officer to interpret" the ambiguous statutory terms).

parts." *Id.* Junkyards were also subject to regulations promulgated by the Commissioner. *See* N.Y. Comp. Codes R. & Regs. tit. 15, §§ 81.2 (registration); 81.8 (procedures upon acquisition of junk and salvage vehicles); 81.10 (vehicle identification numbers); 81.12 (records) (1986). Petitioner has identified no comparable licensing scheme for hotels in Los Angeles. *See supra* p. 32 n.13.

Second, the Court concluded in *Burger* that ordinary Fourth Amendment procedures were infeasible in the automobile disassembly industry because "frequent and unannounced" inspections were necessary given that "stolen cars and parts often pass[ed] quickly through an automobile junkyard." *See Burger*, 483 U.S. at 710 (quotation marks omitted). Access to a logbook was needed to allow an immediate comparison to the parts found at the facility before the parts disappeared. *See id.* But here, as discussed above, there is no comparable danger. While it may be infeasible for the police to seize the thousands of parts stored in any given junkyard, officers concerned about alteration of a hotel registry can easily ensure that it does not "move quickly" off the premises by securing a single registry kept in the hotel lobby or nearby office. *See supra* p. 36.

Third, in any event, although the law in *Burger* also had a recordkeeping requirement, as petitioner notes, Petr. Br. 30, the Court never had occasion to decide any question regarding warrantless record searches without pre-compliance judicial review because the junkyard operator in that case failed to keep a record book at all, and was not arrested for

any recordkeeping violation. *See Burger*, 482 U.S. at 695-96.

Fourth, although the Court ultimately was able to conclude in *Burger* that "no reasonable expectation of privacy could exist for a proprietor" of a junkyard, *Burger*, 482 U.S. at 700 (citation omitted), quite different privacy concerns are at issue in the hotel industry. In contrast to the inspection of a junkyard logbook, searching a hotel registry implicates important privacy interests of hotel guests, even if those interests may not be protected directly by the Fourth Amendment.

Finally, as discussed next, Section 41.49 is a pretext for general crime control, whereas the inspection scheme in *Burger* was not. *See Burger*, 482 U.S. at 712-14, 716 n.27.

C. Section 41.49 Is Also Unconstitutional Because Its Principal Purpose Is Facilitating Warrantless Searches In Aid Of Criminal Investigations Of Hotel Guests.

Although the Ninth Circuit had no occasion to reach the question, *see* Pet. App. 10, Section 41.49 is also unconstitutional because its principal purpose is to facilitate criminal investigations.

Special needs exceptions to the warrant requirement, like the administrative searches permitted under *See* and *Burger*, are unavailable when the search regime's "primary purpose is ultimately indistinguishable from the general interest in crime control." *City of Indianapolis v. Edmond*, 531 U.S. 32, 44 (2000); *see Burger*, 482 U.S. at 712-15. Warrantless searches undertaken

pursuant to a putatively non-criminal inspection regime, but actually "designed as a pretext to enable law enforcement authorities to gather evidence of penal law violations," are unconstitutional. *Skinner*, 489 U.S. at 621 n.5 (citation and quotation marks omitted); *compare Edmond*, 531 U.S. at 44 (invalidating vehicle checkpoint designed to detect drug crimes), *and Delaware v. Prouse*, 440 U.S. 648, 662-63 (1979) (invalidating arbitrary vehicle spot checks designed to detect drivers without proper license and registration), *with Illinois v. Lidster*, 540 U.S. 419, 427-28 (2004) (upholding vehicle checkpoint designed to solicit information), *and Mich. Dep't of State Police v. Sitz*, 496 U.S. 444, 451, 455 (1990) (upholding vehicle checkpoint designed to promote public safety by removing intoxicated drivers from roads).

To decide whether a purportedly administrative search is a pretext for criminal investigation, the Court looks to "the programmatic purpose" of the law or policy to determine if it is appropriately "divorced from the State's general interest in law enforcement" or is instead a pretext for general crime control. *Ferguson*, 532 U.S. at 81, 79; *see also Edmond*, 531 U.S. at 42-43. The Court does not "simply accept the State's invocation of a 'special need.'" *Ferguson*, 532 U.S. at 81. Instead, the Court carries out "a 'close review' of the scheme at issue," *id.* (quoting *Edmond*, 531 U.S. at 44), "consider[ing] all the available evidence," *id.*

Here, the primary purpose of Section 41.49 is general crime control. That purpose is evident first by the breadth of the search authorization and lack of any meaningful constraints on officer discretion. The

police can search the registry of any hotel, at almost any time, for almost anything. *See* Pet. App. 63. That power is of great value for the investigation of particular crimes – where a person or a vehicle was on a particular date is critical to many investigations, as the City and the United States have emphasized. *See* Pet. 29-30; U.S. Br. 26-27. Consequently, if the City had wanted to design an inspection ordinance solely for the purpose of aiding criminal investigations, it would have drafted precisely the same ordinance.

Second, the police's "involve[ment] in the day-to-day administration" of the putatively administrative program is another reason to conclude that the ordinance is pretextual. *Ferguson*, 532 U.S. at 82. The police are the only government officials allowed to enforce Section 41.49. And of the various regulations governing hotels that petitioner cites, Petr. Br. 33-34, Section 41.49 is the *only* one enforced by the police. *See supra* pp. 32-33.

Third, the only sanction for violating the ordinance is criminal. LAMC § 11.00(m). As a consequence, even when the police search a registry solely to determine whether the owner has violated the recordkeeping requirement, they are enforcing a criminal statute.

Fourth, in announcing the purpose of the ordinance in 2006, the City emphasized that the "inspection of hotel and motel registers by the police department is a significant factor in reducing crime in hotels and motels." Petr. Br. Supp. App. 8-9. The United States thus recognizes the true function of the provision when it argues that "[m]aking guest information available for inspection assists police in

finding missing persons, including fugitives, probationers, suspects, and potential witnesses." U.S. Br. 26. The United States even admits, "[i]nspection of the records enables police to determine swiftly whether a person is staying at a particular hotel [e]ven when Fourth Amendment standards of exigency are not present." *Id.* at 27.

Petitioner responds that the purpose of the statute is to deter crime, not to detect and punish it. Petr. Br. 2, 38-40; U.S. Br. 25-26. But that is a very fine line. Any search that results in the detection and punishment of a crime necessarily deters crime. Thus, the government in *Edmond* and *Ferguson* could have equally said in those cases that drug checkpoints and maternal drug testing were intended to deter crime, not punish it. So while "a State can address a major social problem *both* by way of an administrative scheme *and* through penal sanctions," *Burger*, 482 U.S. at 712, here, the conclusion drawn from "all the available evidence" is that Section 41.49's "direct and primary purpose" is not "divorced from the State's general interest in law enforcement." *Ferguson*, 532 U.S. at 81, 84, 79.[20]

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[20] Even if the Court believes Section 41.49 was not drafted to allow unconstitutional warrantless criminal investigatory searches, it still runs the high risk of being used by *individual* officers as a pretext for these types of unconstitutional searches. Affording pre-compliance judicial review would allow a neutral magistrate to ensure that officers do not cross that fine line.

D. In Light Of The Foregoing, Section 41.49 Is Facially Unconstitutional Under *Salerno*.

An ordinance is facially invalid when "no set of circumstances exists under which [it] would be valid." *United States v. Salerno*, 481 U.S. 739, 745 (1987). That standard is met here because every search authorized by Section 41.49 lacks constitutionally adequate procedural safeguards, and "*every* warrantless Section 41.49 inspection is equally unconstitutional *for the same reason*, irrespective of who is being searched." U.S. Br. 16. No "narrower remedy" could "fully protect the litigants," so facial invalidation of Section 41.49's warrantless inspection requirement is the only way to protect respondents from ongoing constitutional violations. *Nat'l Treasury Emps. Union v. Von Raab*, 513 U.S. 454, 477-78 (1995).

1. Petitioner attempts to avoid that outcome by conjuring a handful of situations in which it claims that the ordinance could be validly enforced. Petr. Br. 19-20. These five hypothetical examples do not save the warrantless inspection requirement from facial invalidation; instead, they illuminate its constitutional defect.

In three of the City's hypothetical enforcement scenarios, police derive their legal authority from a source other the ordinance itself, such as a warrant, consent, or exigent circumstances, or because the Fourth Amendment does not even apply given a hypothetical hotel's decision to permit public access to its records. Petr. Br. 19-20. These examples prove only that there are constitutional alternatives to Section 41.49 – they say nothing about searches

pursuant to Section 41.49. In effect, the City argues that the ordinance is constitutional because, in certain hypothetical scenarios, it does no work. That cannot be correct. Otherwise, the same examples would save *any* statute allowing law enforcement to conduct suspicionless, warrantless searches – and yet, the Court has facially invalidated statutes that authorize searches that violate the Fourth Amendment. *Chandler*, 520 U.S. at 314; *Payton v. New York*, 445 U.S. 573, 576 (1980); *Torres v. Puerto Rico*, 442 U.S. 465, 467-68 (1979).

The United States likewise argues that Section 41.49 performs an independent function by forcing hotel owners to cooperate with law enforcement officers when they have an alternative legal basis, such as exigency, for the search. U.S. Br. 18-20. But the ordinance is not necessary to serve that purpose either, because the law already requires business owners to comply with lawful search requests. California's obstruction of justice statute, for example, imposes steeper penalties than Section 41.49, and those penalties are available only in the absence of other sanctions. *See* Cal. Penal Code § 148(a)(1); LAMC § 11.00(m); *see also In re Lowenthal*, 15 P. 359, 359 (Cal. 1887). That, no doubt, is why the City has not enacted versions of Section 41.49 for hospitals, car dealerships, or any of the thousands of other businesses that may be searched in exigent circumstances without a warrant.

Alternatively, petitioner suggests that warrantless searches pursuant to Section 41.49 would not violate the Fourth Amendment if officers requested redacted copies of the registry or if registry entries were uploaded to a government database.

Petr. Br. 19-20. These examples may suggest that a different ordinance might be constitutional, but they say nothing about Section 41.49, which neither authorizes nor contemplates these hypothetical procedures. *See Kraft Gen. Foods, Inc. v. Iowa Dep't of Revenue & Fin.*, 505 U.S. 71, 77-78 (1992) (rejecting as "not persuasive" Iowa's and amicus United States' argument that a state tax scheme did not unconstitutionally discriminate against foreign corporations because they could adopt more tax-efficient corporate structures).

In fact, both hypotheticals run directly contrary to the ordinance as written. Section 41.49 does not require hotels to maintain multiple versions of the registry; instead, it requires that hotel owners prepare a single, comprehensive, and transparent record of guest transactions, which must be available for inspection. LAMC § 41.49(3)(c). Nor does Section 41.49 require – or even permit – hotels to upload guest data to the City, which has no capacity to receive that information in any event. The ordinance requires that the registry be kept "on the hotel premises in the guest reception or guest check-in area or in an office adjacent to that area," and that the hotel owners keep the records for ninety days. *Id.* § (3)(a)- (d). It is these physical records – not some uploaded electronic data – that must be "made available to any officer of the Los Angeles Police Department for inspection." *Id.* § (3)(a).[21]

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[21] The City is wrong in any event to assert that it could require hotels to report all the information in their guest registries to a government agency without violating the Fourth

2. Finally, the United States – but not petitioner – argues that the district court *could have* "exercise[d] its traditional equitable discretion to deny respondents" declaratory and injunctive relief because of respondents' "failure to introduce evidence of concrete searches." U.S. Br. 21. Apparently, the Government takes the view that denying relief on that ground would be appropriate even if, as in this case, no such evidence was needed to evaluate the constitutionality of a law, and even if it was absolutely clear on the record before the court that the statute was unconstitutional in every application. *See id.* 21-23.

This Court need not entertain that argument, for here the district court chose *not* to exercise any such discretion to deny relief on that ground – no doubt in large part because the City never made this argument below – and the City never made this argument as an alternative ground for affirmance below or in this Court. In any event, no "further factual development" is needed to decide the legal issues at hand; petitioner admits that the Court can

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Amendment. In *California Bankers Ass'n v. Schultz*, 416 U.S. 21, 67 (1974), the Court found a record reporting requirement for certain high-value transactions constitutional because the information required in the reports was "sufficiently related to a tenable congressional determination as to improper use of transactions of that type in interstate commerce." In contrast, the City's hypothetical reporting requirement would require hotel owners to disclose information about *every* hotel guest without any attempt to tailor the scope of the reporting to a subset of transactions giving rise to a reasonable concern of illegality.

make some Fourth Amendment determinations "solely by looking to the language and legislative history of the statute and the history of regulation of the industry, not by considering the facts of any particular search," Petr. Br. 28, and this is such a case.

Finally, even if the district court had discretion to decline to rule on respondents' claims, it would surely be an abuse of discretion to do so here, given that the City invited the alleged error by agreeing to litigate the present facial challenge, and thereby induced respondents to dismiss their as-applied damages claims. *See supra* Part I.

IV. Petitioner's Remaining Arguments Are Meritless.

The City argues that even if the ordinance fails under every established Fourth Amendment test, it should still be upheld for two reasons, neither of which it preserved below and neither of which has any merit.

1. Petitioner argues first that Section 41.49 should be upheld using an ad hoc "reasonableness balancing" inquiry. Petr. Br. 47-48. Under this Court's precedents, however, the "balance has already been struck" in this context. Pet. App. 9.

Although the Fourth Amendment requires that searches be "reasonable," courts are not forced to engage in case-by-case balancing whenever a statute or search is challenged. "Fourth Amendment rules ought to be expressed in terms that are readily applicable by the police" and understandable to the public. *Atwater v. City of Lago Vista*, 532 U.S. 318, 347 (2001) (quotations and citations omitted). To

that end, this Court evaluates the reasonableness of searches on a context-by-context basis. *See, e.g.*, *Riley v. California*, 134 S. Ct. 2473, 2485 (2014) (citing *United States v. Robinson*, 414 U.S. 218, 235 (1973)).

In the particular context of administrative searches, this Court's precedents establish rules for assessing the reasonableness of a law authorizing searches. *See, e.g.*, *See v. City of Seattle*, 387 U.S. 541, 545 (1967) (administrative regulatory searches require pre-compliance judicial review to be constitutional); *see also New York v. Burger*, 482 U.S. 691, 699-702 (1987) (exception to *See* for closely regulated businesses). In *Marshall v. Barlow's, Inc.*, 436 U.S. 307, 324 (1978), for example, upon determining that the Occupational Health and Safety Administration's warrantless inspection scheme did not qualify for the closely regulated business exception, the Court held that the inspection scheme was unconstitutional because it failed to provide pre-compliance judicial review as required by *See*. Having decided that the statute failed the applicable Fourth Amendment test, the Court did not go on to engage in another round of reasonableness balancing to try to save the statute. *Id.* at 324-25; *see also Chandler v. Miller*, 520 U.S. 305, 318-23 (1997) (Georgia's failure to demonstrate that drug-testing statue met the special needs exception articulated in previous drug-testing cases resulted in the statute's immediate invalidation, not new balancing).

Nor would the balancing petitioner invites serve any purpose. The City does not identify any consideration not already taken into account in the Court's decisions in *See* and *Burger*. To the contrary,

it does little more than repeat the claims it made in arguing that warrantless inspections are necessary under *Burger*. Petr. Br. 50 (citing pages 37-43 of its own brief).

Even if the Court engages in reasonableness balancing anew, the City has not shown that the balance favors the warrantless inspection requirement. Petitioner cites its "interest in deterring crime in hotels," Petr. Br. 50, but it does not show that this interest is different in kind or degree from those weighed by the Court in *See*, *Camara*, and *Barlow's*, in which the Court acknowledged the government's equally important interest in preventing devastating fires, epidemics, or workplace injury and deaths. *See Barlow's*, 436 U.S. at 309, 316 (workplace safety hazards); *See*, 387 U.S. at 541 (fires); *Camara v. Mun. Court*, 387 U.S. 523, 533 (1967) ("the health and safety of entire urban populations"). Moreover, as shown above, Section 41.49's dramatic departure from ordinary Fourth Amendment protections is unnecessary to serve the City's interests. *See supra* Part III.B.2.

Likewise, the City relies heavily on hotel owners' "diminished" privacy interests. Petr. Br. 51. But the Court acknowledged in the *See* and *Burger* lines of cases that this is true of every commercial enterprise, and it developed Fourth Amendment tests calibrated to the variation in that diminishment. *See, e.g.*, *Burger*, 482 U.S. at 702 (concluding that diminished privacy interests justify foregoing pre-compliance judicial review only if an industry is "closely regulated").

Petitioner also understates respondents' privacy interest. The Fourth Amendment "embod[ies] a

particular concern for government trespass upon the areas ('persons, houses, *papers*, and effects') it enumerates." *United States v. Jones*, 132 S. Ct. 945, 950 (2012) (emphasis added). This Court has consistently held that this central Fourth Amendment concern for the privacy of papers extends to business records as well as private documents. *See, e.g.*, *See*, 387 U.S. at 544; *Hale v. Henkel*, 201 U.S. 43, 76 (1906).[22]

For hotel owners, the registries are important confidential business records. They may use them to develop customer lists and keep track of sales. *See* J.A. 145; Pet. App. 7. They may also use the registries for tax auditing purposes and for preparing valuations of their properties, which may be essential in credit applications or in the event the property is sold. *See* J.A. 144-45.

The privacy of the hotel registry also protects the privacy of the hotel's guests. As this Court has recognized, hotels are guests' homes away from home, where they engage in activities that are necessarily private. *See Hoffa v. United States*, 385 U.S. 293, 301 (1966). That interest extends to guests' comings and goings from the hotel: knowing whether

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[22] Though the lower standard of review for commercial records is a reflection of the government's traditional visitorial power to inspect business records, that power is not immune to minimal pre-compliance judicial review protection. *See, e.g.*, *Okla. Press Publ'g Co. v. Walling*, 327 U.S. 186, 209 (1946); *see also Rex v. Purnell*, (1748) 96 Eng. Rep. 20 (K.B.) (common law protections required that requested papers be public before the government could compel production).

a person has checked into a hotel, whether that person checked in alone, and how long that person stayed all sheds light on that person's private affairs. Section 41.49's warrantless inspection regime burdens this interest directly by authorizing suspicionless rummaging through guest records for the avowed purpose of diminishing guest privacy. In addition to information about guests' whereabouts, hotel registries also contain sensitive information, including driver license and credit card numbers. *See* LAMC § 41.49(2)(b); 41.49(4)(c). Even if customers may have lost the right to raise a Fourth Amendment objection to search of the registries by disclosing this information to a third party, the Court should not turn a blind eye to the very real third-party privacy interests at stake when weighing the overall reasonableness of this regulation.

Against these weighty interests, petitioner argues that hotel registries have in the past been publically accessible. Petr. Br. 51-52. But in modern times, that is only because the City required hotels to make them public. *See* Petr. Br. 52; *id.* S.A. 20 (1936 ordinance requiring guest registry to be public). The City cannot bootstrap its way out of a Fourth Amendment violation by requiring public access to otherwise private papers (*e.g.*, one's diary), then claiming that its searches invade no privacy interests.[23] In any event, petitioner fails to establish

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[23] For the same reason, the fact that the City requires hotels to maintain a registry – something they would have done anyway, for a wide variety of reasons, *see supra* pp. 4, 40; *infra* p. 55 – cannot strip the papers of Fourth Amendment protection. Accordingly, while the Court has treated

a pervasive modern practice that diminishes respondents' privacy interest. Los Angeles curtailed public access to registries almost a decade ago, and the sole modern ordinance petitioner cites involves a limited registry including only the guest's name and address. Petr. Br. 52; Pet. App. 68.

To satisfy its burden, petitioner relies principally on its claim that there is a history of warrantless searches of hotels in Los Angeles dating back to 1899. Petr. Br. 34. But that showing – regarding the practices of single municipality, beginning more than a century after the ratification of the Fourth Amendment – is too little, too late.[24]

When it eventually turns to the right era, petitioner's evidence does not establish a "clear practice" of warrantless, suspicionless searches of inn registries at the discretion of law enforcement

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government-mandated records differently for self-incrimination purposes, it has never done so under the Fourth Amendment. *See Shapiro v. United States*, 335 U.S. 1, 33 & n.42 (1948) (holding that the required records doctrine applies to Fifth Amendment protection, not to the reasonableness inquiry of the Fourth Amendment). Perhaps for that reason, petitioner has not argued that there is a "required records exception" to the Fourth Amendment, although the question is a matter of some dispute in the lower courts. *Compare McLaughlin v. Kings Island, Div. of Taft Broad. Co.*, 849 F.2d 990 (6th Cir. 1988), *and Brock v. Emerson Elec. Co.*, 834 F.2d 994 (11th Cir. 1987), *with McLaughlin v. A.B. Chance Co.*, 842 F.2d 724 (4th Cir. 1988). Given the lack of briefing, this Court should leave it for another day.

[24] Petitioner cites to ordinances in other jurisdictions as well, Petr. Br. 36 n.3, but does not claim that they were enacted in the Founding Era.

officials. For example, the City cites an ambiguous paragraph in a book asserting that several states allowed warrantless inspections of commercial entities like breweries and bakeries. Petr. Br. 49-50. However, the author describes these states as outliers, following a "countervailing tradition." CUDDIHY, *supra*, at 743. They likely embody a pre-Fourth Amendment view that any licensed business could be subject to warrantless inspection, an idea the Fourth Amendment did not codify, but rejected. *See See*, 387 U.S. at 545; *cf. Burwell v. Hobby Lobby Stores, Inc.*, 134 S. Ct. 2751, 2768 (2014) (explaining that "extending Fourth Amendment protection to corporations protects the privacy interests of employees and others associated with the company").

Petitioner asserts that at the Founding, police had access to hotel guest lists because they were not kept private. Petr. Br. 51. That may be true, but it is ultimately irrelevant. Some hotels made registries accessible to the general public – for example, to serve as advertisements by both the hotel and the hotel's guests. *See* David Allen Fyfe, *Commerce and Sociability in Small-Town America: Explorations in Historical GIScience* 71 (2008) (the hotel registry "was often mounted on a rotating fixture with advertisements around the edges."); *id.* at 72 ("Vaudeville acts and the circuses also used the book as advertising by drawing (usually full-page) images of their shows."). But the question here is not whether the police may inspect hotel registries voluntarily exposed to public examination (which they surely can do and need no ordinance to permit). The question is whether they may search registries in

the absence of such voluntary public disclosure. The City cites no relevant history on this question.[25]

Moreover, the history the City does cite demonstrates that any analogy between the public guest book of the Founding Era and modern hotel registries is inapt. Not only are modern registries *not* voluntarily made available for public perusal, they also can contain sensitive information like driver's license and credit card numbers that have no analog in Eighteenth-Century guest books. And even though both modern and historical registries included other identifying information, like the guest's name, the City has not identified anything like Section 41.49's prohibition on the use of pseudonyms in the Founding Era.

If anything, Section 41.49 is most analogous to the reviled writs of assistance that led to the Fourth Amendment's adoption. These writs never expired and enabled the indiscriminate seizure of papers, subjecting the colonists to recurring fishing expeditions into their homes and businesses. *See, e.g.*, *Boyd v. United States*, 116 U.S. 616, 624-26 (1886). The searches authorized by Section 41.49 function the same way: the ordinance provides police with full discretion and continuous license to rummage through hotel records with no judicial involvement whatsoever. Thus, the Ninth Circuit rightly held the ordinance facially unconstitutional.

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[25] For the same reason, petitioner's attempt to show that "inns were heavily regulated at the Founding," Petr. Br. 49, is irrelevant. The question is whether they were subject to the kinds of warrantless searches at issue here.

CONCLUSION

For the foregoing reasons, this Court should dismiss the writ of certiorari as improvidently granted, or, in the alternative, affirm the judgment of the court of appeals.

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CITY OF LOS ANGELES,

Petitioner,

v.

NARANJIBHAI PATEL, ET AL.,

Respondents.

ON WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE NINTH CIRCUIT

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INTRODUCTION[1]

Plaintiffs' brief revolves around false premises. Los Angeles hotel registers have never been "priva[te]" from the police. RB2. For 115 years, hotel owners have been required to create and maintain them for police inspection. And there is nothing "extraordinary" about § 41.49. *Id.* More than 100 cities and states have passed similar laws. For good reason. Without laws like § 41.49, hotels' amenities (a locked door, pulled blinds—and anonymity) can invite crime. In the proverbial "No Tell Motel," a criminal can pay in cash, rent rooms by the hour and without reservations, provide no identifying information, and come and go undetected. Stripped of anonymity, criminals are less likely to use hotels as their transient lairs. But laws like § 41.49 are worthless if hotels let criminals rent rooms without registering—and frequent and unannounced spot checks are the only way to catch hotels that do that.

Searches conducted under § 41.49 are, therefore, facially reasonable and the ordinance falls within the core of the *Burger* exception. But this Court need not reach the reasonableness of § 41.49. A bare facial challenge like this—shorn of any as-applied facts—is an inappropriate vehicle for deciding important questions of constitutional law.

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[1] We cite the City's opening brief as "OB"; Respondents' brief as "RB"; and amicus briefs as "__Br.," according to the lead amicus's name. All emphasis is added unless otherwise noted.

ARGUMENT

I. A FACIAL CHALLENGE CANNOT BE USED TO STRIKE § 41.49 AS A VIOLATION OF THE FOURTH AMENDMENT.

A. Facial Challenges Are Especially Disfavored In The Fourth Amendment Context And Should Be Exceedingly Rare When Devoid Of Facts.

Facial challenges are always disfavored, as Plaintiffs concede. RB16, 48. To clarify how this rule applies in the Fourth Amendment context, this Court should hold that facial challenges claiming that a law authorizes unreasonable searches are especially disfavored—and almost never permitted when unaccompanied by an as-applied challenge and devoid of any concrete facts.

Plaintiffs acknowledge that this Court has *said* that "[t]he constitutional validity of a warrantless search is *pre-eminently* the sort of question which can only be decided in the concrete factual context of the individual case." *Sibron v. New York*, 392 U.S. 40, 59 (1968). *Sibron*'s admonition is even more apt in this context, which is missing both an as-applied challenge and concrete facts about any actual search. Plaintiffs argue that this Court did not mean what it said in *Sibron*: "If it had, then this Court never could have considered *Skinner*, *Chandler*, *Ferguson*, *Torres*, *Payton*, or *Barlow's*." RB19.

Two pages earlier, however, Plaintiffs admit otherwise: "[T]he Court did not describe all of these

cases as facial challenges." *Id.* And not a single one of them struck a statute on a bare facial challenge shorn of any facts about an actual search.

Both *Payton v. New York*, 445 U.S. 573 (1980), and *Torres v. Puerto Rico*, 442 U.S. 465 (1979), were brought as motions to suppress evidence, and the relief granted was as-applied. *See* U.S. Br. 14-15; 442 U.S. at 474. *Marshall v. Barlow's, Inc.*, 436 U.S. 307 (1978), too, was as-applied. And far from categorically striking the statute, this Court declared that its ruling in no way prohibited the Secretary of Labor from applying the statute to conduct constitutional inspections. *Id.* at 325 n.23.

Ferguson v. City of Charleston, 532 U.S. 67 (2001), was not even a challenge to a statute but a hospital policy. *Id.* at 71-73. And it also had an as-applied claim, for which the ten pregnant women who were involuntarily tested for drugs pursued damages. Order of Dismissal, *Ferguson v. City of Charleston*, S.C., No. 93-cv-02624 (D.S.C. Nov. 20, 2006), ECF No. 468 (noting "Plaintiffs' claims for damages ... have been amicably settled").

Chandler v. Miller is the only case Plaintiffs invoke in which this Court granted broader relief and struck the statute as unconstitutional. 520 U.S. 305, 323 (1997). But *Chandler* was not a bare facial challenge to the words of a statute without any facts. The candidates for public office in *Chandler* eventually submitted to the statutorily required drug testing and appeared on the ballot. *Id.* at 310-11. In any event, the defendants in *Chandler* did not challenge the propriety of pursuing facial relief. Just as

deciding a case without addressing jurisdiction is not a tacit jurisdictional holding, *see Arizona Christian Sch. Tuition Org. v. Winn*, 131 S. Ct. 1436, 1448 (2011), deciding a facial challenge without addressing the vehicle is not a tacit approval of the vehicle.[2]

These cases all disprove Plaintiffs' assertion that our proposed rule would "prevent the Court from addressing blatant constitutional violations." RB18. All involved as-applied challenges with concrete facts. Nor does our proposed rule risk a "flood of future as-applied challenges" or "inconsistent rulings in the lower courts." RB19. As-applied challenges are the norm for adjudicating constitutional questions. Yet, no flood has materialized.

B. A Bare Facial Challenge To § 41.49 Is Inappropriate.

To illustrate the impropriety of adjudicating the reasonableness of all possible searches that could be conducted pursuant to § 41.49 in a factual vacuum, our opening brief (at 19-20) set out just a few of the many scenarios possible under § 41.49. Plaintiffs argue that each scenario is either an unconstitutional inspection or not conducted "pursuant to Section 41.49." RB49.

Plaintiffs are mistaken. Scenario 1 posits that the hotel owner leaves the register open to guest in-

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[2] This principle applies with even greater force to *Skinner v. Ry. Labor Execs.' Ass'n*, 489 U.S. 602, 632 n.10 (1989), where the Court *rejected* a facial challenge without considering whether the vehicle was proper.

spection (as all Los Angeles hotels were legally required to do until 2006). OB19. But what if the hotel owner snatches the register away every time the police walk in? Contrary to Plaintiffs' assertion (at 48-49), § 41.49 does all the "work" in that context: It requires the hotel to hand over the register for inspection on pain of imprisonment. The point of the scenario is that the hotel cannot claim an expectation of privacy there.

Similarly, Plaintiffs assert that § 41.49 does "no work" in scenarios 4 and 5, where § 41.49 "forc[es] hotel owners to cooperate with law enforcement officers when they have an alternative legal basis" to conduct the search. RB49. Plaintiffs argue "the law already requires business owners to comply with lawful search requests." *Id.* That is wrong. Obstruction statutes prohibit a hotel owner from *obstructing* a search, but they do not require affirmative assistance, as § 41.49 would in these scenarios.

Plaintiffs likewise assert that scenarios 2 and 3, OB19-20, would not be "pursuant to § 41.49." RB49-50. But nothing in the plain language of § 41.49 prohibits the City from establishing a system whereby a hotel makes the required information "available" for police inspection over the internet (scenario 2). And nothing precludes an officer from requesting to inspect a redacted version of the records (scenario 3). If the City takes those steps, the only basis for the demand would be § 41.49.

C. Plaintiffs Cannot Save Their Facial Challenge By Arguing Waiver Or That This Court's Grant Of Review Was Unwise.

1. The petition framed the question as: "[A]re facial challenges to ordinances and statutes permitted under the Fourth Amendment?" Pet. i. Plaintiffs incorrectly argue that the City has "abandon[ed]" the first question presented, claiming our opening brief proposes no responsive rule at all, and makes only "fact-bound" arguments limited to "this case." RB13.

That is nonsense. The proof is in Plaintiffs' description of our argument in the next section of their brief (Point II). They say we do advocate "a rule." RB18. They describe it as a rule that "facial challenges cannot be raised against statutes under the Fourth Amendment." RB22. And they explain what would supposedly happen to *other cases* under our "rule." RB18-19, 23. Whoever wrote Point I needs to be introduced to the author of Point II.

The City asked this Court to "either prohibit Fourth Amendment facial challenges *or delineate a clear rule for when they are allowed, especially in the troublesome warrantless search context.*" Cert. Reply 2, 6. That is exactly what we have done. When "are facial challenges to ordinances and statutes permitted under the Fourth Amendment?" Almost never—particularly not in a bare facial challenge devoid of facts about any particular search. This latter feature was the main focus of our cert. petition as well. *See* Pet. 1, 13-14, 16, 21-22, 24.

2. Plaintiffs are also wrong in contending that the City "has waived any error in the court's deciding the [merits] question." RB14. Plaintiffs made the same argument in opposing cert. Brief in Opposition 13-14. They "offer[] no clear justification for" why this Court should "now embrac[e] an argument '[it] necessarily considered and rejected' in granting certiorari." *Stolt-Nielsen S.A. v. AnimalFeeds Int'l Corp.*, 559 U.S. 662, 670 n.2 (2010) (quoting *United States v. Williams*, 504 U.S. 36, 40 (1992)).

Moreover, this Court was right to reject the argument. Contrary to Plaintiffs' assertion, the City did not "agree[] that hearing only the facial challenge would ... allow the district court to resolve ... the validity of the ordinance ... without the need for" concrete facts relating to specific searches. RB13. The stipulation said simply: "The parties agree that the sole issue in the consolidated action is a facial constitutional challenge to LAMC section 41.49 under the Fourth Amendment." J.A. 195; *see* J.A. 110-11.

Regardless, the issue is in this case and appropriate for decision simply because the Ninth Circuit raised whether this was a proper facial challenge and the parties addressed the issue to that court. J.A. 260-62, 280-84, 296-98.

II. SECTION 41.49 IS NOT FACIALLY UNCONSTITUTIONAL.

Before we refute Plaintiffs' arguments on the merits, we address two threshold issues: First, Plaintiffs assert that the City bears the burden of

establishing the constitutionality of § 41.49. RB2, 11, 29, 34, 39. That is backwards. Plaintiffs must establish that all searches conducted pursuant to § 41.49 would be unconstitutional. "[O]ne of the first principles of constitutional adjudication [is] the basic presumption of the constitutional validity of a duly enacted state or federal law." *Lemon v. Kurtzman*, 411 U.S. 192, 208 (1973) (plurality opinion) (internal quotation marks omitted). That "strong presumption" applies equally to a Fourth Amendment challenge to a statute. *United States v. Watson*, 423 U.S. 411, 416 (1976) (internal quotation marks omitted). Moreover, where, as here, a plaintiff challenges a duly enacted law on its face, the challenger bears the "heavy burden" of establishing "that no set of circumstances exists under which the Act would be valid." *United States v. Salerno*, 481 U.S. 739, 745 (1987).

Second, contrary to Plaintiffs' suggestion, *See v. City of Seattle*, 387 U.S. 541 (1967), does not decide this case. In defending § 41.49, the City invoked only one established exception to the warrant requirement: *New York v. Burger*'s exception for a reasonable administrative inspection regime in a closely regulated business. 482 U.S. 691 (1987). Yet, Plaintiffs build their argument around the assertion that the City has not satisfied the completely separate exception for administrative subpoenas discussed in *See*, which requires that "the subpoenaed party ... obtain judicial review of the reasonableness of the demand prior to suffering penalties for refusing to comply." 387 U.S. at 544-45; RB10, 24, 26-27, 29, 53. Since we are not invoking that exception, it is irrelevant.

Moreover, since deciding *See*, this Court has made clear that there is no categorical rule that "the Fourth Amendment requires an opportunity for precompliance judicial review before the government can conduct a regulatory search." RB25 (capitalization omitted). The established exception to the warrant requirement for administrative search regimes in closely regulated industries does not require precompliance judicial review. § II.A. And even apart from that exception, this Court has repeatedly upheld warrantless administrative searches without precompliance judicial review. *See, e.g., Skinner*, 489 U.S. at 619 (upholding drug and alcohol testing of railroad employees without a warrant or precompliance judicial review). § II.B.

Under either legal rubric, the cases belie Plaintiffs' breathless description of § 41.49 as granting "nearly limitless search authority." RB11. This Court's other commercial administrative search cases considered statutes that authorized wide-ranging searches of every nook and cranny across a company's entire premises. Not § 41.49, which authorizes a very limited inspection of a single register that contains very limited information and that hotels maintain for the City in only one of two mandated locations.

A. Section 41.49 Is A Reasonable Administrative Inspection Scheme In A Closely Regulated Industry.

The *Burger* framework, set almost 30 years ago, refines the principles of an exception this Court adopted 45 years ago and has consistently applied

since. Nevertheless, Plaintiffs avoid *Burger* at every turn (at 29-41), then argue, "Petitioner is left then to argue that ... its ordinance is no worse a fit with the pervasively regulated ... exception ... than the junkyard inspection ordinance in *Burger*," RB42. On all fours with *the* key Supreme Court case on a subject is not a bad place to be "left." But this case compares favorably not only to *Burger*, but also to *Colonnade Catering Corp. v. United States*, 397 U.S. 72 (1970); *United States v. Biswell*, 406 U.S. 311 (1972); and *Donovan v. Dewey*, 452 U.S. 594 (1981), all of which entailed much more sweeping searches.

1. Hotels are closely regulated.

Our opening brief demonstrated (at 31-36) that hotels are closely regulated in Los Angeles and have been closely regulated since the Founding. Plaintiffs and their amici ignore the compelling historical materials altogether. They also do not explain away their concession that "[t]here does seem to be a pervasive scheme throughout the state statutes regulating the various aspects of the motel industry." J.A. 133. Instead, they offer three arguments why their concession was wrong.

First, they characterize the current regulations as a "hodge-podge" of regulations that "apply to any business." RB31-32. Yet most of the regulations cited apply *only* to the hospitality industry. Illustrative are regulations that:

- require collection of specified information upon renting a room, LAMC § 41.49;

- strictly limit when it is permissible to evict a lingering guest, Cal. Civ. Code § 1865(c);

- require conspicuous posting of rates, Cal. Civ. Code § 1863(a);

- prohibit charging more than the posted rate, *id.* § 1863(b);

- require a change in bed linens between guests, Cal. Code Regs. tit. 25, § 40; and

- require the hotel to offer guests the option of not having towels and linens laundered daily, LAMC § 121.08(A)(12).

The only provisions we cited that extend beyond the hospitality industry are the prohibition against turning away guests, which applies to innkeepers and common carriers, Cal. Penal Code § 365, and the provision requiring sanitary handling of cups and ice buckets, which applies to hotels, motels, and other "public places," Cal. Code Regs. tit 17, § 30852. Notably, City officials inspect hotels for compliance with that regulation. *Id.* § 30858.

Plaintiffs reject this array of hotel-specific regulations as insufficiently "comprehensive." RB32. But this regime is far more "comprehensive" than *Burger*'s junkyard regulations, which required only licensing/registration, recordkeeping, and warrantless inspections of records and inventory. *See* 482 U.S. at 704-05.

Second, Plaintiffs assert that hotel "licensing requirements" are not "stringent." RB42-43. That is

irrelevant. In *Dewey*, mine owners needed no license at all. 452 U.S. at 604. In *Colonnade*, the federal "license" was a retail liquor dealer's occupational tax stamp. 397 U.S. at 72. And *Burger* did not turn on the specifics of licensing. *See* 482 U.S. at 704 n.15.

Third, Plaintiffs contend that the four industries to which this Court has applied the exception—the only four industries it has ever considered—all "presented unusual risk of harm to the public." RB30. Plaintiffs do not explain how automobile junkyards seriously threaten public safety. If the key is, as one amicus contends, that automobile junkyards are "permeated with criminal activity," Google Br. 19, the same is true of parking-meter motels, *see* OB2, 5-6.

Regulation of hotels has been longstanding and comprehensive in the precise ways that are relevant here. Hotels are one of the few industries where, for centuries, proprietors have been legally required to open their doors to all members of the public. OB34-36. And because allowing anybody to stay at any hotel anonymously creates unusual risks of harm to the public, for more than 115 years hotel owners in Los Angeles have been legally obligated to keep guest registry information and make it available for police inspection. Accordingly, any person who chooses to operate a hotel in Los Angeles does so "with the knowledge" that he is required to maintain certain records "subject to effective [police] inspection," *Biswell*, 406 U.S. at 316, and can be fairly deemed to have "voluntar[ily] consent[ed]" to the inspections here, *Barlow's*, 436 U.S. at 314. Plaintiffs' slippery-slope warnings that, if § 41.49 falls within

Burger, the government could force any industry to keep and disclose customer records are thus unfounded. Indeed, the background here much more strongly indicates consent than *Dewey* or *Burger*, where mines and vehicle dismantlers were subject to inspection for only 15 and 8 years respectively. *See* 452 U.S. at 605 n.10; 482 U.S. at 705.

2. Section 41.49 meets *Burger*'s other criteria.

a. Section 41.49's stated purpose is to "discourag[e] the use of hotel and motel rooms for illegal activities, particularly prostitution and narcotics offenses." L.A., Cal., Ordinance 177966 (Oct. 6, 2006). Approximately 100,000 children are trafficked for sex in the U.S. each year. Love146 Br. 6. Traffickers initially recruit most girls between the ages of 12 and 14. *Id.* at 7. Hotels and motels, which offer traffickers a private and anonymous place from which to conduct business, are vital to the operation, both as sites where children engage in commercial sex acts and as prisons for the child victims. *Id.* at 3, 13.

Nevertheless, Plaintiffs speculate that § 41.49 must be a "pretext" for "criminal investigations of hotel guests." RB44 (capitalization altered). But they concede away the point. They concede that "ensuring ... hotel owners keep proper records" is a valid, "non-criminal purpose." RB35. And they do not contest that doing so "discourag[es] the use of hotel and motel rooms for illegal activities," because, as the City Council explained, criminals prefer to re-

main anonymous. L.A., Cal., Ordinance 177966 (Oct. 6, 2006).

While § 41.49 is directed at deterring crime, it is just not directed at general criminal investigations against guests. Nothing in the register tells police whether a hotel guest has committed a crime—and merely scanning a register for completeness is unlikely to detect guests' crimes. Section 41.49's purpose is to ensure that commercial actors—hotel owners—comply with the regulatory requirement that they record customer identities, in order to prevent the harmful secondary effects that arise from allowing guests to remain anonymous.

Plaintiffs' two arguments that the ordinance is pretextual despite all this are both meritless. First, Plaintiffs note that the police enforce § 41.49. RB46. This Court has already held that there is no "constitutional significance in the fact that police officers, rather than 'administrative' agents, are permitted to conduct [an] inspection." *Burger*, 482 U.S. at 717. Indeed, the relevant statutes were enforced by the police in *Burger*, *id.* at 693; by a city police officer with a Federal Treasury agent in *Biswell*, 406 U.S. at 312; and by federal law enforcement agents in *Colonnade*, 397 U.S. at 72-73.

Plaintiffs' second point is that "the only sanction for violating the ordinance is criminal." RB46. But the statutes in *Colonnade*, *Biswell*, and *Burger* likewise criminalized the failure to maintain the required records, refusal to admit inspectors, or both. 397 U.S. at 77; 406 U.S. at 313 n.2, 315 n.4; 482 U.S. at 694 n.1.

b. Plaintiffs argue that spot inspections are not "necessary to further the non-criminal purpose of ensuring that hotel owners keep proper records." RB35. Plaintiffs ignore this Court's holdings—in multiple situations—that "the prerequisite of a warrant could easily frustrate inspection." *Biswell*, 406 U.S. at 316. That is especially true where "unannounced, even frequent, inspections are essential," i.e., where inspections seek to discover "conditions" that are easy to "conceal." *Id.* This Court applied that principle to gun dealerships, because, if a gun dealer knows an inspector is on the way, he can move off premises any illegal weapons he conveniently left off the purchase records. It applied the principle to automobile junkyards in *Burger*—even though cars are presumably harder to conceal—"[b]ecause stolen cars and parts often pass quickly through ... junkyard[s]." 482 U.S. at 710. And it applied the principle to mines in *Dewey*, deferring to Congress's determination that "in [light] of the notorious ease with which many safety or health hazards may be concealed if advance warning of inspection is obtained, a warrant requirement would seriously undercut this Act's objectives." 452 U.S. at 603 (internal quotation marks omitted).

Plaintiffs ignore all these holdings about the need for frequent, unannounced inspections when the evidence of violations is moveable or unavailable in retrospect. They also overlook how advance notice or delayed review would defeat § 41.49's objectives in the same way. Our opening brief (at 39) gave one illustration of how spot checks detect record-keeping violations. There are many more. If the parking lot is packed with cars, but the register reflects just one

room rental, the officer knows the records are incomplete. So, too, if the officer sees a guest walk into Room 2, but the register shows Room 2 vacant.

Just as in this Court's past precedents, detection fails if inspections have to be scheduled, delayed for court review, or infrequent. Scheduled inspections mean the hotel manager simply registers everyone on premises on inspection day and advises the known criminals (or those who refuse to provide information) to find another temporary lair. Similarly, when inspection is delayed, or the officer cannot return unannounced at random intervals, the officer cannot check the registrations against observable facts in real time. An administrative subpoena system would similarly frustrate the scheme, with or without precompliance judicial review. Motel owners can obviously ensure that any records they submit are accurate for submission day, while otherwise allowing criminals to rent rooms without providing the required information.

Plaintiffs suggest that officers "may seize and hold the registry without searching it pending judicial review." RB36. But the whole point of the precedents is that warrantless inspections are essential where verifying compliance depends on observing items or conditions on premises that are easy to disguise or move. Seizing the register is useless unless the police also seize the evidence necessary to verify its accuracy, including all the guests and vehicles on premises. *See* RB43 (acknowledging that seizure of a junkyard's inventory pending judicial review is not feasible).

Next, Plaintiffs argue that the City could verify the accuracy of some information after the fact by seizing the records and then consulting the Department of Motor Vehicles. RB38. But even if the police did so, that would only discourage motel owners from creating fake cards with phony license plate numbers. It would not stop them from renting rooms without any register entry, or fraudulently filling in empty entries with real names and license plates of past customers who were not, in fact, staying in the hotel at the time.

Plaintiffs also protest that "the City has failed to substantiate" the City Council's legislative judgment "that there is a recordkeeping problem in need of this extraordinary solution." RB39. Again, Plaintiffs have the standard backwards. Plaintiffs are challenging § 41.49 on its face. They thus bear the burden of proving that even without frequent, unannounced inspections, hotel and motel owners *would* accurately record and maintain the required information. *See Salerno*, 481 U.S. at 745.

On the other side of the equation, our opening brief explains (at 42) how adding a warrant—or pre-compliance review—would provide no additional protection because § 41.49 inspections are not premised on probable cause to believe that a crime has been committed. Because the inspections' purpose is to incentivize motel owners to keep accurate records (which thereby deters crime), it is unclear what showing a magistrate could require before approving a request for a warrant to conduct a random spot check, or on what basis he could refuse such a request. U.S. Br. 33.

Plaintiffs respond that a magistrate would (1) "confirm compliance with the statutory limits on the official's authority"; (2) ensure that the search is "sufficiently limited in scope, relevant in purpose, and specific in directive so that compliance will not be unreasonably burdensome"; and (3) ensure that the search is not "a pretext for harassment or criminal investigation." RB27 (internal quotation marks omitted). But the first two are guaranteed by § 41.49 itself. Section 41.49 specifies exactly what information must be included in the register, how long the information must be maintained, and what police are permitted to search—only the register. Even the Ninth Circuit held that § 41.49 "adequately specif[ies] (and limit[s] the scope of) the records subject to inspection." P.A. 11-12.

As to the third point, § 41.49 itself protects against harassing searches by providing that, "[w]henever possible, the inspection shall be conducted at a time and in a manner that minimizes any interference with the operation of the business." § 41.49(3)(a). Plaintiffs have not documented any abuse. If they ever do, they can challenge the harassment as unconstitutional. *See LeSueur-Richmond Slate Corp. v. Fehrer*, 666 F.3d 261, 268 (4th Cir. 2012).

Finally, amicus Google argues (at 19) that "[t]he statute is far broader than necessary to accomplish the government's purpose" because not all hotels suffer from the "problems attendant to hourly motels." Plaintiffs, themselves, make no overbreadth claim, presumably because their motels are plagued by the problems to which § 41.49 is directed. And so far as

appears from the amicus activity, hotels like Four Seasons, Sheraton, and Hilton remain untroubled by the ordinance. Either way, this Court cannot strike a law on Fourth Amendment grounds neither applicable to, nor asserted by, Plaintiffs. "Fourth Amendment rights are personal rights which may not be vicariously asserted," *Plumhoff v. Rickard*, 134 S. Ct. 2012, 2022 (2014) (internal quotation marks and ellipses omitted).

c. Plaintiffs do not deny all the ways in which § 41.49 limits inspections just as a warrant does. Section 41.49 provides that only the register may be inspected. Inspections can take place in only two places—in the "guest check-in area or in an office adjacent to that area," § 41.49(3)(a)—and the hotel owner chooses which. And "[w]henever possible" the inspection must be conducted "at a time ... that minimizes any interference with the operation of the business." *Id.*

Plaintiffs object that § 41.49 "fails to ... limit officers' discretion" because it does not prescribe "which hotels to inspect," "how often to inspect them," or "what information to review." RB41. The last objection is false. Only the register may be inspected, and § 41.49(2)(a) and (4) prescribe exactly what information the register includes. The first two objections were equally true of the statutes at issue in *Burger*, *Biswell*, and *Colonnade*. None specified how owners were to be chosen for inspection or how often inspections could occur. *See* 482 U.S. at 694 n.1 & n.2, 711 n.21; 406 U.S. at 313 n.1; 397 U.S. at 73 n.1 & n.2. And in *Burger* this Court rejected the very same argument Plaintiffs advance

here, holding it sufficient that the statute "as a whole, place[d] adequate limits upon the discretion of the inspecting officers." 482 U.S. at 711 n.21; *see Biswell*, 406 U.S. at 316.

d. One of Plaintiffs' amici (though not Plaintiffs) urges this Court to add a fourth element: "that business records containing third party information cannot fall into the closely-regulated industry" exception. Rutherford Br. 12. But the business records in *Biswell* contained even more—and more personal—third party information. *See* 18 U.S.C. § 923(g) (1970); 26 C.F.R. § 178.124 (1972) (requiring firearm dealer to record each purchaser's "name, address, date and place of birth, height, weight, and race").

Moreover, Plaintiffs disclaimed any argument based on the privacy rights of the hotel guests, conceding, both before the district court and the Ninth Circuit, that "clearly the motel guest ... can't claim that he has an expectation of privacy." J.A. 235; *see* J.A. 273. Under the third-party doctrine, they had no choice. *United States v. Miller*, 425 U.S. 435, 443 (1976).

B. Searches Conducted Pursuant To § 41.49 Are Reasonable.

Even if *Burger* did not defeat Plaintiffs' facial claim, they still cannot prevail unless they demonstrate that all searches conducted pursuant to § 41.49 would be unreasonable. As explained above (at 2-5) that is not possible on a facial challenge. In any event, the ordinance strikes a reasonable bal-

ance on the core hypothetical the Ninth Circuit indulged, and even more so in the other applications.

Plaintiffs' main response is that this Court cannot balance the reasonableness of searches that could be conducted pursuant to § 41.49 if it finds that *Burger* does not apply. They claim this Court has already "establish[ed] rules for assessing" the constitutionality of all searches conducted pursuant to § 41.49 and that all relevant considerations are subsumed within *Burger*. RB53-54. But this Court has never assessed the constitutionality of any hotel register inspection scheme, let alone every possible inspection that could be conducted pursuant to § 41.49. And this Court regularly engages in the required balancing. *See, e.g.*, *Maryland v. King*, 133 S. Ct. 1958, 1969 (2013).

Marshall v. Barlow's is not to the contrary. Plaintiffs report that "upon determining that the [OSHA] warrantless inspection scheme did not qualify for the closely regulated business exception," this Court did not "go on to engage in another round of reasonableness balancing." RB53. Wrong. After concluding that the "closely regulated industry" exception did not apply *to all businesses involved in interstate commerce*, the Court proceeded to balance the reasonableness of OSHA searches, "[b]ecause reasonableness is still the ultimate standard." 436 U.S. at 315-16 (internal quotation marks omitted). As if to anticipate Plaintiffs' point here, the Court added: "The reasonableness of a warrantless search ... will depend upon the specific enforcement needs and privacy guarantees of *each statute*." *Id.* at 321.

The reasonableness balancing, which Plaintiffs barely address, begins with "guidance from the founding era." *Riley v. California*, 134 S. Ct. 2473, 2484 (2014). Our opening brief explains (at 49) that warrantless inspections of inns—not mere registers—were common at the Founding, citing laws from Massachusetts and New Hampshire. Connecticut had a similar law authorizing constables, grand jurors, and selectmen to inspect licensed houses, including inns. An Act For Licencing And Regulating Houses Of Public Entertainment, Or Taverns; And For Suppressing Unlicenced Houses, 411 (1796), *reprinted in* William Edmond, *Acts and Laws of the State of Connecticut, in America* 408-12 (1797). Plaintiffs dismiss these laws as "likely embody[ing] a pre-Fourth Amendment view that any licensed business could be subject to warrantless inspection, an idea the Fourth Amendment ... rejected." RB58. But Plaintiffs must have overlooked the dates: The statutes were enacted in 1786, 1791 and 1796, respectively.

History aside, § 41.49 strikes a reasonable balance between the City's interest in ensuring that its hotels do not become hotbeds of crime and the individual hotel owner's interest in preventing police from viewing records that he has been required to maintain for police inspection since 1899. *See Vernonia Sch. Dist. 47J v. Acton*, 515 U.S. 646, 652-54 (1995). For the reasons discussed above (at 13-20), the City's interest is compelling and the search is about as limited as a search can be. As to the hotel owner's expectation of privacy, there is none—or at least none to speak of. Hotels cannot seriously claim that they have a strong privacy interest in information they have been collecting *for City inspec-*

tion for 115 years. (They certainly cannot so claim if they leave the register open for guest review, but snatch it away when the police show up.) That is not "bootstrap[ping]." RB56. It is a century-long, time-honored, legally required reality.

Plaintiffs also contend that the "registries are important confidential business records," because hotel owners may use them "for tax auditing purposes" and to "prepare[] valuations of their properties." RB55. But turning over the required information to the IRS or a commercial bank should give Plaintiffs less of an expectation of privacy in it, not more.

C. The City Has Addressed The Question Presented.

The second question in the cert. petition asks: "To resolve a split between the Ninth Circuit and the Massachusetts Supreme Court, does a hotel have an expectation of privacy under the Fourth Amendment in a hotel guest registry ...? If so, is the ordinance facially unconstitutional under the Fourth Amendment ... ?" Pet. i. Plaintiffs contend that the City "abandon[ed]" the question presented by "seek[ing] a ruling that would leave the circuit conflicts ... unresolved." RB14-16. That is wrong. The petition correctly described the split as follows: "[*Commonwealth v. Blinn*, 399 Mass. 126 (1987)] conflict[s] with *Patel* .... *Patel* concluded the City's ordinance ... was facially unconstitutional because pre-enforcement judicial review was required, but in *Blinn* the court upheld the warrantless search under the Fourth Amendment." Pet. 27. We have not con-

ceded that "the Ninth Circuit was on the right side of [that] split[]," RB9, or any other.

Plaintiffs also criticize the City for arguing that "Section 41.49 satisfies the test for pervasively regulated industries under *New York v. Burger*," without "mak[ing] that argument in its cert. petition." RB15. But the cert. petition did not make any arguments on the merits at all. It just laid out the splits that merited this Court's review. That was not a waiver of the core argument the City advanced throughout this litigation.

As to the preliminary question about expectations of privacy, Plaintiffs assert that the City "abandons that question, too, [by] conceding that *the Fourth Amendment applies* to registry searches." RB14. That conflates two separate questions. Under *United States v. Jones*, 132 S. Ct. 945, 949-51 (2012), a search occurs if the government physically intrudes upon a constitutionally protected area—person, house, paper or effect—for the purpose of gathering information, even if there is no "reasonable expectation of privacy" in that area. To concede that inspecting a guest register maintained behind the counter would be a search under *Jones* does not concede there is a reasonable expectation of privacy.

Of course, privacy interests remain relevant to whether a search is reasonable. *See, e.g.*, *King*, 133 S. Ct. at 1969. The City addressed hotel owners' privacy interests extensively, both in the context of *Burger* (at 10-13) and in the context of the reasonableness of searches that could be conducted pursuant

to § 41.49 (at 22-23).[3] Nevertheless, Plaintiffs claim that the petition should be dismissed because a sentence in the opening brief "argu[ed] only that 'hotels have a *diminished* privacy interest in their guest registers,'" RB14 (quoting OB51), rather than none whatsoever. Lest there be any doubt, our position is that a hotel has no expectation of privacy from the police with respect to the register. In any event, the difference is inconsequential as the key precedents use both interchangeably. *Compare Barlow's*, 436 U.S. at 313 (describing the closely regulated industries exception as hinging on "such a history of government oversight that *no reasonable expectation of privacy* could exist" (internal citation omitted)), *with Burger*, 482 U.S. at 701 (describing the same exception as resting on "the *reduced expectation of privacy* by an owner of commercial premises in a closely regulated industry"). The reasonableness of a search depends on the *degree* of privacy interests, not on whether they are completely nonexistent.

CONCLUSION

This Court should reverse the court of appeals' judgment.

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[3] Plaintiffs are wrong in asserting (at 15 n.5, 52) that the reasonableness argument was waived. Both the Ninth Circuit panel and Judge Clifton's dissent concluded that a § 41.49 inspection would constitute a search under *Jones* but Plaintiffs "fail[ed] to establish that [the] search ... would be unreasonable." P.A. 25-34, 43-44.

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AMICUS CURIAE BRIEF

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v.

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BRIEF FOR THE UNITED STATES AS AMICUS CURIAE SUPPORTING PETITIONER

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QUESTIONS PRESENTED

1. Whether Los Angeles Municipal Code § 41.49 (2008), which requires that hotels make specified registry records about guests "available to any officer of the Los Angeles Police Department for inspection," may be challenged as facially invalid under the Fourth Amendment.

2. Whether Section 41.49 is facially invalid under the Fourth Amendment because it does not provide for judicial review before the police may conduct a registry inspection.

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In the Supreme Court of the United States

No. 13-1175

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v.

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BRIEF FOR THE UNITED STATES AS AMICUS CURIAE SUPPORTING PETITIONER

INTEREST OF THE UNITED STATES

This case concerns whether a facial Fourth Amendment challenge may be maintained to a records-inspection statute and, if so, whether the statute is constitutional. Federal statutes authorize agencies to inspect and acquire business records in a variety of contexts that might give rise to facial Fourth Amendment challenges. The United States therefore has a substantial interest in the resolution of the questions presented.

STATEMENT

1. Since 1899, Los Angeles hotels have been required to maintain a guest register and to make that information available to police for inspection. See L.A., Cal., Mun. Code (LAMC) § 41.49 (2008) (Pet. Br.

App. SA 1); L.A., Cal., Penal Ordinance 5760 (New Series), § 995 (Apr. 28, 1899) (Pet. Br. App. SA 21). Under current law, codified in LAMC § 41.49, hotel operators must record the name and address of each guest; the name of the person who checked in the guest; the number of people in the party; the make, model, and license number of the guest's vehicle if it is parked on hotel property; the date and time of arrival; the scheduled departure date; the room number; the rate charged and amount collected; and the method of payment. LAMC § 41.49(2)(a). For guests who pay in cash, walk-in guests, and guests who rent a room hourly or for less than 12 hours, the operator must demand identification and record the number and expiration date of the identifying document. LAMC §§ 41.49(2)(a)(1)(iii) and (4). For guests who check in by electronic kiosk, the records must contain the guest's name, reservation information, and credit card information, as well as the identifying symbol of the kiosk the guest used to check in. LAMC § 41.49(2)(b).

These records may be maintained in a book, on cards, or electronically. LAMC § 41.49(1). They must be kept in the hotel's reception or check-in area, or an adjacent office. LAMC § 41.49(3)(a). They must be maintained for 90 days, unless "any other provision of law," "including the obligation to maintain and produce records for the purpose of paying a transient occupancy tax," requires retention for longer. LAMC § 41.49(3)(a) and (d).

Section 41.49(3)(a) mandates that the records "shall be made available to any officer of the Los Angeles Police Department for inspection." LAMC § 41.49(3)(a). "Whenever possible, the inspection shall be conducted at a time and in a manner that minimizes any interfer-

ence with the operation of the business." *Ibid.* Failure to make the records available for inspection is a misdemeanor punishable by up to six months in prison and a $1000 fine. Pet. App. 5; see LAMC § 11.00(m) (2004) (Pet. Br. App. SA 26).

2. Respondents are owners and operators of motels in Los Angeles, and a lodging association. They sued the City of Los Angeles under 42 U.S.C. 1983, seeking declaratory and injunctive relief on the grounds that inspections pursuant to Section 41.49 violate the Fourth Amendment. Pet. App. 5-6. Respondents initially claimed that Section 41.49 was unconstitutional both as applied to them and "on its face in all its applications." J.A. 186-187. By stipulation, however, respondents abandoned their as-applied claims, leaving only the claim that Section 41.49(3)(a) is facially unconstitutional. See Pet. App. 5-6; J.A. 195. The parties also stipulated that respondents have been and continue to be subjected to mandatory record inspections under the ordinance without consent or a warrant. Pet. App. 37; J.A. 194-195.

The district court held a bench trial. "The only exhibit introduced at the bench trial was the text of LAMC § 41.49." Pet. App. 37, 49-53.

The district court granted judgment to petitioner. Pet. App. 38, 58. The court concluded that warrantless Section 41.49 inspections could not be justified as permissible administrative searches of closely regulated businesses, because petitioner had not established that the hotel industry is closely regulated. *Id.* at 53-55; see *New York* v. *Burger*, 482 U.S. 691 (1987). The court concluded, however, that hotel operators lack a reasonable expectation of privacy in the records that are subject to inspection. Pet. App. 55-57.

3. A panel of the court of appeals affirmed. Pet. App. 35-48. The panel stated that the Fourth Amendment applies when an officer violates a person's reasonable expectation of privacy or trespasses upon "persons, houses, papers, and effects." *Id.* at 39. The panel concluded that respondents had not shown that they, "let alone * * * all hotel operators," "have an objectively reasonable expectation of privacy in the information covered by [the] ordinance." *Id.* at 43. The panel also concluded that although "[t]he guest register covered by the city ordinance is a protected paper" under the Fourth Amendment, *ibid.*, respondents "failed to demonstrate that the limited intrusion authorized under the ordinance is unreasonable in their own particular circumstances, let alone in terms that would support a facial challenge to the ordinance," *id.* at 44.

Judge Pregerson dissented. Pet. App. 46. He would have held that the ordinance is facially invalid because it authorizes warrantless searches that do not fall within any well-established exception to the Fourth Amendment's warrant requirement. *Ibid.*

4. An en banc panel of the court of appeals reversed. Pet. App. 1-34. The court first concluded that "a police officer's non-consensual inspection of hotel guest records under § 41.49 constitutes a Fourth Amendment 'search'" under "either the property-based approach" of *United States* v. *Jones*, 132 S. Ct. 945 (2012), or "the privacy-based approach" of *Katz* v. *United States*, 389 U.S. 347 (1967). Pet. App. 6, 9.

Next, the court reasoned that, to determine whether "the searches authorized by § 41.49 are reasonable," it would "[o]rdinarily * * * balance 'the need to search against the invasion which the search en-

tails.'" Pet. App. 9 (quoting *Camara* v. *Municipal Court*, 387 U.S. 523, 537 (1967)). But here, the court of appeals determined, "th[e] balance has already been struck" by this Court. *Ibid.* Specifically, the court of appeals viewed *Oklahoma Press Publishing Co.* v. *Walling*, 327 U.S. 186 (1946), and *Donovan* v. *Lone Steer, Inc.*, 464 U.S. 408 (1984), as controlling. The court of appeals concluded that these cases "made clear that, to be reasonable, an administrative record-inspection scheme need not require issuance of a search warrant" but "must at a minimum afford an opportunity for pre-compliance judicial review, an element that § 41.49 lacks." Pet. App. 9-10. The court held that "[b]ecause this procedural deficiency affects the validity of all searches authorized by § 41.49(3)(a), there are no circumstances in which the record-inspection provision may be constitutionally applied." *Id.* at 14.

Judge Tallman dissented, joined by Judges O'Scannlain, Clifton, and Callahan. Pet. App. 14-24. Judge Tallman reasoned that Section 41.49 could be construed to apply in a manner consistent with the Fourth Amendment. For example, "the ordinance would apply to hoteliers with equal force if Los Angeles police officers arrived at a hotel with a legitimate search warrant and the hotelier refused to produce the register." *Id.* at 17. The ordinance could also be validly applied when police request the information in exigent circumstances. *Id.* at 18.

Judge Clifton also dissented, joined by Judges O'Scannlain, Tallman, and Callahan. Pet. App. 25-34. Judge Clifton reasoned that "[t]he absence of judicial review establishes only that the ordinance might not qualify for the recognized exception for administrative

subpoenas or inspections." *Id.* at 27. In his view, the majority failed to address whether a warrantless search under the ordinance was otherwise reasonable. *Id.* at 27-29. Judge Clifton concluded that an evidentiary showing is necessary to establish the hotel owners' expectation of privacy in their records, but that respondents had made no such showing. *Id.* at 33-34.

SUMMARY OF ARGUMENT

I. The court of appeals should not have entertained respondents' facial constitutional challenge to Los Angeles's hotel-registry maintenance and inspection statute. Facial challenges are a disfavored means of constitutional adjudication because, among other things, they often require speculation about the application of a provision to numerous contexts that are not presented by a particular case. That concern is heightened in the context of Fourth Amendment reasonableness challenges. Such challenges turn on particularized assessments of the interests implicated by a search or seizure, and when a variety of fact patterns may arise under a statute, it is difficult to consider them all in a single case. This Court's decision in *Sibron* v. *New York*, 392 U.S. 40 (1968), accordingly establishes that courts should adjudicate Fourth Amendment claims by assessing the constitutionality of concrete searches or seizures, and not through the "abstract and unproductive exercise" of comparing the language of a statute against the language of the Fourth Amendment. *Id.* at 59.

Here, respondents' facial challenge should have been rejected at the outset because respondents introduced no concrete evidence whatsoever about registry inspections and Section 41.49 inspections may occur in a variety of circumstances that implicate

materially different constitutional considerations. This Court has never found a "facial" Fourth Amendment violation in a case on such an extraordinary posture.

Indeed, some Section 41.49 inspections will be more than just materially distinguishable from the circumstance the court of appeals focused upon—they will be categorically reasonable and therefore constitutional. For example, application of Section 41.49(3)(a) would be constitutional in any inspection performed under exigent circumstances. Contrary to the court of appeals' conclusion, Section 41.49(3)(a) has a role to play in this context: the threat of penalties could allow an exigent inspection to succeed even when the hotel operator would otherwise refuse to consent. Similarly, some hotels may openly share registry information for commercial or other reasons and thus have little or no privacy expectation. These circumstances provide a sufficient basis to reject respondents' facial challenge. At a minimum, *Sibron* counsels that a court can and should exercise its traditional equitable discretion to decline to grant such broad injunctive or declaratory relief in a Fourth Amendment case when the record is as bare-bones as this one.

II. The court of appeals also erred in concluding that Section 41.49 is unreasonable for the inspections that it believed characteristic: inspections of hotel registries performed in a hotel lobby or otherwise without official entry into a private space.

Such inspections are reasonable and therefore constitutional. Section 41.49 is tailored to further important governmental interests in deterring prostitution, drug dealing, and other crimes that are facilitated by anonymous use of hotel rooms. Section 41.49

also assists efforts to locate missing persons. Section 41.49 requires all hotel visitors to identify themselves; it requires hotels to maintain records containing precisely defined information about guests; and it enables police to quickly inspect these records. The possibility of unannounced inspections, backed by penalties, encourages hotels to demand that guests identify themselves and thus discourages the anonymous use of short-term or unscrupulous hotels for criminal activity. And any intrusion on privacy is highly limited: Section 41.49 inspections can be performed without official entry into any private space and do not involve disclosure of highly confidential information.

Finally, Section 41.49 tightly restricts police discretion. It describes with particularity the registry to be inspected, precisely what information must be made available, where the register must be kept, and for how long records must be maintained. It also limits the circumstances under which inspections may be performed.

The court of appeals erred in holding that *Oklahoma Press* and *Lone Steer* had "already * * * struck" the Fourth Amendment balance here and require an opportunity for judicial review before a person may suffer penalties for refusing an inspection demand. Pet. App. 9. In those cases, judicial review was necessary to ensure that administrative subpoenas authorized under the Fair Labor Standards Act of 1938 (FLSA), 29 U.S.C. 201 *et seq.*, were "sufficiently limited in scope, relevant in purpose, and specific in directive so that compliance will not be unreasonably burdensome." Pet. App. 11-12 (quoting *See* v. *City of Seattle*, 387 U.S. 541, 544 (1967)). But here, the court of appeals itself recognized that judicial review is *not*

needed to ensure that Section 41.49 inspections are sufficiently limited, relevant, and specific: Section 41.49 already ensures that itself. *Ibid.*

As a result, judicial review has little or no work to do under Section 41.49. The procedural requirement of *Oklahoma Press* and *Lone Steer* should not be extended to a context where the substantive requirements of those cases are already served. Moreover, judicial review would undermine the regulatory scheme. Litigation delays would give hotel operators an increased opportunity to forge their records or otherwise evade the identification requirement, which would undermine the deterrent effect of unannounced inspections and hinder efforts to find missing persons.

ARGUMENT

THE LOS ANGELES HOTEL RECORD-INSPECTION PROVISION SHOULD NOT HAVE BEEN HELD FACIALLY INVALID

The Fourth Amendment prohibits "unreasonable searches and seizures." The court of appeals invalidated Los Angeles's hotel record-inspection law on its face—that is, in all applications to all contexts—because it does not require pre-compliance judicial review. That challenge should have been rejected for two reasons. First, facial invalidation was an inappropriate response to respondent's Fourth Amendment claim. Second, the inspection scheme satisfies constitutional reasonableness requirements.

I. RESPONDENTS' FACIAL CHALLENGE TO SECTION 41.49 SHOULD NOT HAVE BEEN ENTERTAINED

The court of appeals erred by entertaining respondents' facial challenge to Section 41.49. Respondents introduced no evidence whatsoever about con-

crete inspections, thereby depriving the court of the specific factual predicate generally needed to adjudicate Fourth Amendment claims. Moreover, inspections pursuant to Section 41.49 may occur under a variety of different circumstances raising materially different constitutional issues. Facial attacks are the rare exception to the general rule that a constitutional claim should be addressed on its case-specific facts, and respondents' factually undeveloped request for the court to invalidate a statute on Fourth Amendment grounds was especially inappropriate.

A. Facial Constitutional Challenges Are Disfavored

In *United States* v. *Salerno*, 481 U.S. 739 (1987), this Court held that, to succeed in a facial challenge, a challenger generally must prove "that no set of circumstances exists under which the [law] would be valid." *Id.* at 745; accord, *e.g.*, *Anderson* v. *Edwards*, 514 U.S. 143, 155 n.6 (1995); *Reno* v. *Flores*, 507 U.S. 292, 301 (1993). Some members of this Court dispute that principle and would require the challenger to prove only that the statute lacks a "plainly legitimate sweep." *United States* v. *Stevens*, 559 U.S. 460, 473 (2010) (quoting *New York* v. *Ferber*, 458 U.S. 747, 770 (1982)) (noting dispute); *Washington State Grange* v. *Washington State Republican Party*, 552 U.S. 442, 449 & n.6 (2008) (*Grange*) (same). All agree, however, that "[f]acial challenges are disfavored" and that "the normal rule" is as-applied litigation with "partial, rather than facial, invalidation" as the remedy for a successful constitutional claim. *Grange*, 552 U.S. at 450; *Ayotte* v. *Planned Parenthood*, 546 U.S. 320, 329 (2006) (quoting *Brockett* v. *Spokane Arcades, Inc.*, 472 U.S. 491, 504 (1985)).

"Facial challenges are disfavored for several reasons." *Grange*, 552 U.S. at 450. "Claims of facial invalidity often rest on speculation." *Ibid.* Accordingly, they invite premature interpretation of statutes based on hypothetical or inadequately developed facts. *Sabri* v. *United States*, 541 U.S. 600, 609 (2004). Facial challenges also run contrary to "fundamental principle[s]" of constitutional avoidance and judicial restraint. *Grange*, 552 U.S. at 450. And facial challenges, by applying broadly to contexts not before the court, "threaten to short circuit the democratic process by preventing laws embodying the will of the people from being implemented in a manner consistent with the Constitution." *Id.* at 451 (quoting *Regan* v. *Time, Inc.*, 468 U.S. 641, 652 (1984) (plurality op.)).

Facial review of state statutes raises additional concerns and warrants additional caution. Facial invalidation of one provision in a statutory scheme may raise severability issues. See Henry Paul Monaghan, *Overbreadth*, 1981 Sup. Ct. Rev. 1, 5-6. The general rule, however, is that state courts should have the first opportunity to address "how far parts of [the state law] may be sustained if others fail." *Yazoo & Miss. Valley R.R.* v. *Jackson Vinegar Co.*, 226 U.S. 217, 219-220 (1912). Similarly, federal courts should hesitate to strike down state laws when state courts "have had no occasion * * * to accord the law a limiting construction to avoid constitutional questions." *Grange*, 552 U.S. at 450.

B. Fourth Amendment Unreasonableness Claims Raise Particularly Unsuitable Contexts For Facial Adjudication

The reasons that facial challenges are generally disfavored apply with particular force to claims that a statute authorizes unreasonable searches or seizures in violation of the Fourth Amendment. Fourth Amendment analysis is highly context-sensitive. Courts should be especially cautious when addressing a facial challenge in any Fourth Amendment reasonableness case—and their caution should be at its apex when the record includes no evidence about concrete searches or seizures.

1. "[T]he ultimate touchstone of the Fourth Amendment is 'reasonableness.'" *Heien* v. *North Carolina*, No. 13-604 (Dec. 15, 2014), slip op. at 5 (quoting *Riley* v. *California*, 134 S. Ct. 2473, 2482 (2014)). Absent more precise guidance from the founding era, the reasonableness of a warrantless search or seizure requires "a careful balancing of the nature and quality of the intrusion on the individual's Fourth Amendment interests against the countervailing governmental interests * * * at stake." *Plumhoff* v. *Rickard*, 134 S. Ct. 2012, 2020 (2014) (citation omitted). This balancing "depends on the context within which a search takes place." *Maryland* v. *King*, 133 S. Ct. 1958, 1978 (2013) (quoting *New Jersey* v. *T.L.O.*, 469 U.S. 325, 337 (1985)); see also *Samson* v. *California*, 547 U.S. 843, 848 (2006) (depends on "the totality of the circumstances" (citation omitted)); *O'Connor* v. *Ortega*, 480 U.S. 709, 715 (1987) ("differ[s] according to context"). Because the Fourth Amendment inquiry is so context-sensitive, a court's ability to balance the competing interests will often benefit from concrete

evidence about what exactly the interests are and how exactly they are implicated. See *Warshak* v. *United States*, 532 F.3d 521, 528 (6th Cir. 2008) (en banc) ("Concerns about the premature resolution of legal disputes have particular resonance in the context of the Fourth Amendment.").

In *Sibron* v. *New York*, 392 U.S. 40 (1968), this Court made clear that courts should generally refrain from adjudicating the constitutionality of searches and seizures authorized by a statute as an abstract matter, and instead should adjudicate the constitutionality of particular searches or seizures pursuant to that statute. In *Sibron*, two criminal defendants sought to suppress evidence that was collected when, pursuant to a New York statute, police had stopped and searched them without a warrant. *Id.* at 44-50. Both parties urged the Court to decide the constitutionality of the statute "on its face," without regard to the circumstances of either search. *Id.* at 59. This Court refused the bait. "The constitutional validity of a warrantless search is pre-eminently the sort of question which can only be decided in the concrete factual context of the individual case." *Ibid.* This Court also described as "abstract and unproductive" the "exercise of laying the extraordinarily elastic categories of [the state law] next to the categories of the Fourth Amendment in an effort to determine whether the two are in some sense compatible." *Ibid.* The state law was also "susceptible to a wide variety of interpretations," leaving open questions about the scope of the statutory authority and its limits. *Id.* at 60.

This Court's decisions on administrative searches and seizures reinforce the point. For example, this Court stated in *See* that the validity of a warrantless

search or seizure pursuant to an administrative scheme "can only be resolved * * * on a case-by-case basis under the general Fourth Amendment standard of reasonableness." 387 U.S. at 546. And in *Marshall* v. *Barlow's, Inc.*, 436 U.S. 307 (1978), this Court explained that "[t]he reasonableness of a warrantless search * * * will depend upon the specific enforcement needs and privacy guarantees of each statute." *Id.* at 321.

2. In rare circumstances, this Court has issued decisions that could be described as "invalidating" statutes that authorized warrantless searches or seizures. See *Berger* v. *New York*, 388 U.S. 41 (1967); see also *Payton* v. *New York*, 445 U.S. 573 (1980); *Torres* v. *Puerto Rico*, 442 U.S. 465 (1979); *Barlow's*, 436 U.S. at 311. Unlike *Sibron*, however, none of these cases "discuss the distinction between as-applied and facial challenges, and accordingly [they] did not reach * * * the question whether it would have made sense to proceed differently." *Warshak*, 532 F.3d at 530.

More fundamentally, *Berger*, *Payton*, *Torres*, and *Barlow's* are consistent with *Sibron*. They all involve typical as-applied litigation arising from particular searches that were performed or attempted. *Berger*, *Payton*, and *Torres* involved motions to suppress evidence collected from warrantless searches or seizures of individual defendants. The courts had the benefit of a concrete factual record about those searches and seizures; standing and ripeness were obvious (the challenger was being prosecuted based on that evidence); and the remedy was retrospective and narrow (suppression of the evidence). See *Berger*, 388 U.S. at 45; *Payton*, 445 U.S. at 576-583; *Torres*,

442 U.S. at 467-468.[1] These cases "invalidated" the underlying statutes, if at all, only in the sense that their substantive rule of decision would govern similar cases as a matter of stare decisis. A future court faced with a search under different circumstances could, however, potentially find those differences material and reach a different outcome.

In *Barlow's*, this Court affirmed an injunction and declaratory judgment "that [Section 8(a) of the Occupational Safety and Health Act of 1970, 29 U.S.C. 657(a)] is unconstitutional insofar as it purports to authorize inspections without warrant or its equivalent." 436 U.S. at 325. But unlike this case, *Barlow's* had the benefit of a concrete record with evidence of actual attempts to search a particular area of a particular place of business at particular times. See *id.* at 309-310. And this Court recognized that crafting a prospective decree may be an additional difficulty, even when a concrete Fourth Amendment violation is found. This Court noted that "[t]he injunction * * * should not be understood to forbid the Secretary from exercising the inspection authority conferred by § 8 pursuant to regulations and judicial process that satisfy the Fourth Amendment." *Id.* at 325 n.23.

3. This court has never applied an overbreadth-type analysis in a Fourth Amendment case, and it

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[1] *Berger* also addressed a statute governing the issuance of a warrant, and thus interpreted the Fourth Amendment's Warrant Clause, not the Reasonableness Clause. See 388 U.S. at 54-56. The procedural requirements of the Warrant Clause may be less sensitive to individualized circumstances, and thus more amenable to facial-style challenges, than the Reasonableness Clause. See *Sibron*, 392 U.S. at 59 (distinguishing *Berger* on this basis).

should not do so here. Overbreadth is limited to "relatively few settings, and, generally, on the strength of specific reasons weighty enough to overcome [the Court's] well-founded reticence." *Sabri*, 541 U.S. at 609-610. But this is not an appropriate vehicle for addressing the issue because respondents have not raised an overbreadth claim. Respondents have not argued that Section 41.49 inspections of their hotels are unconstitutional because of the way Section 41.49 applies to others, in contrast to the way it applies to them. Respondents' contention is that *every* warrantless Section 41.49 inspection is equally unconstitutional *for the same reason*, irrespective of who is being searched: respondents argue that all such inspections are unconstitutional because they lack a warrant or pre-compliance judicial review.

On respondents' view of the Fourth Amendment, the constitutionality of every warrantless inspection pursuant to Section 41.49(3)(a) is thus a "common question of law" that a court can decide "in one stroke." *Wal-Mart Stores, Inc.* v. *Dukes*, 131 S. Ct. 2541, 2551 (2011). But respondents' demands must be rejected if respondents fail to prove that individualized circumstances of particular inspections will not lead to different outcomes in some circumstances, *or* if they cannot show that pre-compliance judicial review is a requirement for all Section 41.49 inspections.

C. Respondents' Facial Challenge To Section 41.49 Should Have Been Rejected At The Threshold

Respondents' case is not the rare exception in which a facial Fourth Amendment challenge should be entertained. Respondents alleged that they "have been and continue to be subjected to searches and seizures of their motel registration records by police,

pursuant to [Section 41.49], without consent or a warrant." J.A. 37. Specifically, respondents argue (1) that every warrantless inspection pursuant to Section 41.49 is an unreasonable search because Section 41.49(3)(a) empowers officers to demand to inspect a hotel's registry and the hotel must comply or face penalties, whereas, in their view, the Fourth Amendment mandates a warrant or pre-compliance judicial review; and (2) they are therefore entitled to a declaration that all Section 41.49 inspections are unconstitutional and an injunction against such future inspections. *Id.* at 36. If granted, this broad relief would effectively render Section 41.49(3)(a)'s inspection requirement "facially invalid."

Respondents' suit should have been rejected under *Sibron* without adjudicating the merits of their underlying claims. If respondents had introduced evidence of particular record inspections, under *Sibron* review would have been limited to typical as-applied litigation on the validity of those inspections and whether and how to provide prospective relief if a violation were found. Respondents instead introduced no evidence whatsoever about concrete inspections performed pursuant to Section 41.49, yet they demanded that all such inspections be declared unconstitutional. By choosing not to place any facts before the court, respondents deprived the court of the concrete factual predicate generally needed to adjudicate Fourth Amendment claims. This oversight was particularly problematic because respondents failed to demonstrate that all (or even virtually all) Section 41.49 inspections implicate materially identical Fourth Amendment considerations. Rather, a wide range of situations exists in which the constitutional analysis of

registry inspections could significantly differ from the bare-bones paradigm assumed by the court of appeals. Indeed, application of Section 41.49(3)(a) will be categorically reasonable in a significant range of circumstances. See Pet. Br. 19-20.

1. Notwithstanding that respondents' registries "have been" inspected pursuant to Section 41.49, Pet. App. 37, respondents introduced "no concrete facts to analyze the circumstances of [any] individual search." Pet. App. 19 (Tallman, J., dissenting). Compounding the problem, respondents failed to introduce other evidence that could be relevant to the Fourth Amendment analysis: How do respondents maintain their registries? Do they take steps to protect the privacy of their registries? What is industry practice? How do the police typically perform inspections? Under what circumstances? Respondents thus asked the federal courts to engage in the "abstract and unproductive exercise" of comparing Section 41.49's language to "the categories of the Fourth Amendment in an effort to determine whether the two are in some sense compatible," which *Sibron* generally forbids. 392 U.S. at 59.

2. Respondents' failure to introduce any evidence of concrete Section 41.49 inspections should have been fatal because such inspections can occur under a variety of factual circumstances that implicate very different Fourth Amendment considerations. Indeed, some Section 41.49 inspections will be categorically reasonable.

a. Section 41.49(3)(a) could be constitutionally applied in exigent-circumstances inspections. See *Kentucky* v. *King*, 131 S. Ct. 1849, 1856 (2011). That doctrine enables police to enter a private place without a

warrant "to render emergency assistance to an injured occupant or to protect an occupant from imminent injury"; "when they are in hot pursuit of a fleeing suspect"; "to prevent the imminent destruction of evidence"; or because there is a likelihood that a suspect will imminently flee. *Ibid.* (quoting *Brigham City* v. *Stuart*, 547 U.S. 398, 403 (2006)); see *Missouri* v. *McNeely*, 133 S. Ct. 1552, 1558-1559 (2013); *Georgia* v. *Randolph*, 547 U.S. 103, 117 n.6 (2006). Here, police could have reasonable cause to believe, for example, that someone who presents an imminent danger to himself or others is present in a particular hotel. Officers could inspect the registry to locate the individual and the room where he is staying. Officers might also have a need to inspect hotel records when in hot pursuit of a suspect. Section 41.49(3)(a) could be constitutionally applied to impose penalties upon a hotel owner who refuses under these circumstances.

The court of appeals found this possibility irrelevant to the constitutionality of Section 41.49 because an inspection under exigent circumstances would "compl[y] with the Fourth Amendment whether § 41.49 is on the books or not." Pet. App. 14. The court in effect concluded that, in exigency cases, Section 41.49(3)(a) is superfluous. This is incorrect. Registry records may be stored in a locked drawer, kept in a locked office, or—if maintained electronically—be encrypted or password-protected. Without Section 41.49(3)(a), hotels could refuse to give police access to the records. Section 41.49(3)(a), however, makes such a refusal punishable by a fine or imprisonment. LAMC § 11.00(m); see Pet. App. 5. The ordinance therefore has a role to play in exigent circumstances.

b. Officers could similarly invoke Section 41.49(3)(a) when a hotel operator lacks an objectively reasonable expectation of privacy in the registry information. For example, if a hotel leaves the register in the lobby in a place where any guest could see it, Section 41.49(3)(a) could be validly applied if the hotel operator nonetheless refused to show the register to police. If a hotel openly shared its registry information with a group of other hotels, officials could also invoke Section 41.49(3)(a) to demand production of or access to that information, without giving rise to a Fourth Amendment problem. See *United States* v. *Miller*, 425 U.S. 435, 442-443 (1976). Respondents offered no evidence about industry-wide or prevalent local practices and made no record-specific showing concerning the uses hotels made of the information gathered pursuant to the unchallenged record-keeping provisions of Los Angeles law. See Pet. App. 5 (noting that respondents "do not challenge" Section 41.49's requirements that they identify their guests and record and maintain that information).

Respondents thus did not merely invite speculation and conjecture about one set of circumstances without the benefit of record evidence about concrete searches, respondents invited speculation and conjecture ranging across a wide variety of possible factual circumstances and multiple areas of substantive Fourth Amendment law. Under *Sibron*, such a broad and abstract facial claim fails as a matter of law. And because respondents abandoned their case-specific as-applied claims, respondents had no potentially viable claims to adjudicate.

D. Courts Have Equitable Discretion To Decline To Enjoin, Or Declare Unconstitutional, All Searches or Seizures Under A Statute When The Record Is Inadequate

Respondents' failure to introduce evidence of concrete searches also provides an appropriate basis for a district court to exercise its traditional equitable discretion to deny respondents the broad injunctive and declaratory relief they seek. To obtain the prospective relief sought here, respondents not only had to show on the merits that the warrantless inspections they seek to enjoin—all Section 41.49 inspections—violate the Fourth Amendment. They also had to satisfy the prudential and equitable requirements that apply whenever a plaintiff demands declaratory or injunctive relief. Depending on the circumstances of a case, this second burden can be weighty and respondents did not carry it here.

1. "The injunctive and declaratory judgment remedies are discretionary." *Abbott Labs.* v. *Gardner*, 387 U.S. 136, 148 (1967). "An injunction is a drastic and extraordinary remedy, which should not be granted as a matter of course." *Monsanto* v. *Geertson Seed Farms*, 561 U.S. 139, 165 (2010). To obtain a permanent injunction, a plaintiff must prevail on the merits *and* demonstrate: "(1) that [she] has suffered an irreparable injury; (2) that remedies available at law, such as monetary damages, are inadequate to compensate for that injury; (3) that, considering the balance of hardships between the plaintiff and defendant, a remedy in equity is warranted; and (4) that the public interest would not be disserved by a permanent injunction." *Id.* at 156-157 (quoting *eBay Inc.* v. *MercExchange, L.L.C.*, 547 U.S. 388, 391 (2006)).

Similarly, the Declaratory Judgment Act provides that federal district courts "may" issue a declaratory judgment, not that they *shall* issue such a judgment. 28 U.S.C. 2201(a). This permissive language grants federal district courts "unique and substantial discretion in deciding whether to declare the rights of litigants." *Wilton* v. *Seven Falls Co.*, 515 U.S. 277, 286 (1995); see also *Abbott Labs.*, 387 U.S. at 149.

In exercising its equitable discretion, a district court may consider "(1) the fitness of the issues for judicial decision and (2) the hardship to the parties of withholding court consideration." *National Park Hospitality Ass'n* v. *Department of the Interior*, 538 U.S. 803, 808 (2003).[2] A claim may be unfit for decision if "further factual development would 'significantly advance [courts'] ability to deal with the legal issues presented.'" *Id.* at 812 (quoting *Duke Power Co.* v. *Carolina Envt'l Study Grp., Inc.*, 438 U.S. 59, 82 (1978)); see also *Thomas* v. *Union Carbide Agric. Prods. Co.*, 473 U.S. 568, 581 (1985). Prospective relief may also be imprudent or inequitable if the claim does not "admit 'of specific relief through a decree of a conclusive character, as distinguished from an opinion advising on what the law would be upon a hypothetical state of facts.'" *Calderon* v. *Ashmus*, 523

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[2] Whatever the continuing vitality of refusing to exercise Article III jurisdiction for prudential reasons, see *Susan B. Anthony List* v. *Driehaus*, 134 S. Ct. 2334, 2347 (2014); *Lexmark Int'l, Inc.* v. *Static Control Components, Inc.*, 134 S. Ct. 1377, 1386-1388 (2014), this Court has not cast doubt on its holdings that a district court has discretion to decline to grant declaratory or injunctive relief for equitable and prudential reasons, see, *e.g.*, *Monsanto*, 561 U.S. at 156-157; *MedImmune* v. *Genentech, Inc.*, 549 U.S. 118, 136 (2007); *Abbott*, 387 U.S. at 148.

U.S. 740, 746 (1998) (quoting *Aetna Life Ins. Co.* v. *Haworth*, 300 U.S. 227, 241 (1937)).

2. Here, *Sibron* further indicates that granting equitable relief in the form of an injunction or declaratory judgment would not have been a prudent exercise of discretion. Again, respondents voluntarily chose to introduce no evidence whatsoever about past Section 41.49 inspections, notwithstanding that respondents could have easily done so: Respondents' registries have been inspected in the past. Pet. App. 37. Respondents thus asked the federal courts to invalidate all Section 41.49 inspections without regard to the concrete facts of any inspection or the variety of circumstances under which such inspections may occur. In such circumstances, district courts can appropriately exercise their traditional equitable discretion to decline to engage in the "abstract and unproductive exercise" of comparing a statute's language to "the categories of the Fourth Amendment in an effort to determine whether the two are in some sense compatible." *Sibron*, 392 U.S. at 59.

When a federal court is asked to halt the operation of a regulatory program that governmental authorities deem important to deter and prevent crime, it should not wield that authority based on factually undeveloped Fourth Amendment claims that are inapplicable to many of the situations that may arise under the statute. A prudent exercise of judicial power would lead a court to refuse to grant prospective relief under such circumstances, without need to adjudicate the merits of the underlying constitutional claims.

II. INSPECTIONS AUTHORIZED BY SECTION 41.49 ARE CONSTITUTIONALLY REASONABLE UNDER THE CIRCUMSTANCES ENVISIONONED BY THE COURT OF APPEALS

Even under the suppositions of the court of appeals—that it had identified the exclusive scenario to which Section 41.49 applied and that a facial challenge was appropriate—the inspections authorized under Section 41.49 are valid under the Fourth Amendment. The court of appeals analyzed the validity of Section 41.49 inspections on the premise that the papers to be inspected were sufficiently private to fall within the Fourth Amendment and that the inspections would be performed without police entry into a private space. Pet. App. 7-11. Contrary to the court's conclusion, that fact-pattern does not amount to an unreasonable search and seizure because the hotels have no opportunity for pre-compliance review. Rather, the Los Angeles provision authorizes a limited and reasonable inspection program that would be frustrated if the police were required to seek a court order in advance of each inspection—without countervailing benefit to respondents' privacy-related interests.

A. Inspections Authorized By Section 41.49 Are Reasonable Under A Fourth Amendment Test That Balances The Government Interests Against The Intrusion On Privacy Interests

While certain searches, particularly of a home, may generally be undertaken only after the police secure a warrant supported by probable cause, see, *e.g.*, *Kentucky* v. *King*, 131 S. Ct. at 1856, regulatory schemes that authorize inspections may often be reasonable without a warrant or probable cause. One means of analyzing such schemes is under the closely regulated

business doctrine of *New York* v. *Burger*, 482 U.S. 691 (1987). As petitioner argues, Section 41.49 inspections are reasonable under that doctrine. See Pet. Br. 29-47. But even assuming that Los Angeles hotels are not a closely regulated industry, general Fourth Amendment reasonableness principles, see pp. 12-13, *supra*, validate the Los Angeles hotel-registry inspection scheme.

A warrantless search without probable cause is particularly likely to be reasonable if the governmental need is especially great; it involves modest intrusions on the individual's privacy; and protections are in place that limit the discretion of officers in the field. *Maryland* v. *King*, 133 S. Ct. at 1969; see, *e.g.*, *Illinois* v. *McArthur*, 531 U.S. 326, 330-331 (2001); *Skinner* v. *Railway Labor Execs.' Ass'n*, 489 U.S. 602, 622-633 (1989); *Camara* v. *Municipal Court*, 387 U.S. 523, 534-540 (1967). Under that standard, the Section 41.49 inspections envisioned by the court of appeals are reasonable.

1. Section 41.49(3)(a) serves important government interests.

a. Section 41.49 "discourage[s] the use of hotel and motel rooms for illegal activities, particularly prostitution and narcotics offenses." Ordinance 177,966, Pmbl. (Oct. 6, 2006) (Pet. Br. App. SA 8); see Pet. App. 10. Rent-by-the-hour, "no-tell motels," that are hotbeds of prostitution, drug dealing, and other illegal activity pose serious threats to the public safety and welfare. See, *e.g.*, *United States* v. *Singh*, 518 F.3d 236 (4th Cir. 2008) (affirming convictions of motel operators involved in a prostitution ring); *United States* v. *Adamson*, 441 F.3d 513, 520 (7th Cir. 2006) (discussing a motel that was "generally viewed as a site of frequent

criminal activity"); Press Release, U.S. Atty's Office for the W. Dist. of Wash., *Feds Seize Three Long-Time Problem Motels in Tukwila as Part of Year-Long Initiative* (Aug. 27, 2013), http://www.fbi.gov/seattle/press-releases/2013/feds-seize-three-long-time-problem-motels-in-tukwila-as-part-of-year-long-initiative (reporting seizure of three motels that "accounted for approximately 17 percent of the [local police department's] calls for service"). Requiring visitors to identify themselves—and requiring hotels to record that information—deters visitors from using an anonymous stay at a hotel to facilitate criminal activity. See Ordinance 177,966, Pmbl.; Pet. 29.

The possibility of unannounced inspections is vital to encourage hotels to maintain accurate records and to allow police to verify whether they are doing so. See Ordinance 177,966, Pmbl.; cf. *Burger*, 482 U.S. at 710 ("unannounced, even frequent, inspections are essential" (citation omitted)). Without the availability of such inspections, the opportunities for fabrication of guest registries, with no realistic possibility of detection, would thwart the scheme's effectiveness. If hotels can avoid the registry requirements, they can cater to guests who desire anonymity for criminal conduct—and the hotels can then become havens for crime.

b. Making guest information available for inspection assists police in finding missing persons, including fugitives, probationers, suspects, and potential witnesses. Pet. 29; see Ordinance 177,966, Pmbl.; *e.g.*, *State* v. *Brown*, No. 1 CA-CR 07-0921, 2009 WL 960790, at *1 (Ariz. Ct. App. Apr. 9, 2009) (discussing police use of a hotel register to find a probationer). Section 41.49 is the key enforcement mechanism that

supports the requirement that hotels have visitors identify themselves and keep records of their visitors' identities. Inspection of the records enables police to determine swiftly whether a person is staying at a particular hotel: police can demand to inspect the register without having to seek a court order, issue a subpoena, or face litigation delays before compliance. Even when Fourth Amendment standards of exigency are not present, the prospect of obtaining registry information immediately serves important government interests.

c. The strength of the government interests underlying Section 41.49 is confirmed by historical tradition and widespread practice. "The innkeeper has from the earliest time been recognized as engaged in a public employment" such that the inn is "affected with a public interest." Joseph Henry Beale, Jr., *The Law of Innkeepers and Hotels* §§ 51, 52, at 35-36 (1906) (citation omitted); see David S. Bogen, *The Innkeeper's Tale: The Legal Development of a Public Calling*, 1996 Utah L. Rev. 51, 89-90 (1996). Both today and at common law, it has been a crime for an inn to refuse a paying guest without just cause. See Cal. Penal Code § 365 (West 2010); 4 William Blackstone, *Commentaries* *168; Beale § 53, at 37; Joseph Story, *Commentary on Bailments* § 470 & nn.7 & 8, at 437 (9th ed. 1878).

The need for a hotel to register its guests (and for officials to inspect the registry) is a corollary to the hotel's longstanding public role as a place for any transient visitor to stay. Los Angeles hotels have been subject to registry maintenance and inspection laws since 1899. See L.A., Cal., Penal Ordinance 5760 §§ 995, 997 (Apr. 28, 1899) (Pet. Br. App. SA 20). And

registry maintenance and inspection laws are common in many other jurisdictions. See Pet. Br. 36 n.3 (collecting citations); Pet. App. 66-107 (same).

2. Section 41.49 inspections impose little intrusion into a hotel operator's privacy. That is especially true where, as the court of appeals assumed, inspections are performed without demanding entry into a private place.

"The businessman, like the occupant of a residence, has a constitutional right to go about his business free from unreasonable official entries upon his private commercial property." *See*, 387 U.S. at 543. But "[a]n expectation of privacy in commercial premises * * * is different from, and indeed less than, a similar expectation in an individual's home." *Burger*, 482 U.S. at 700. The expectation of privacy is particularly weak here. Inspections may be performed by inspecting the records in the hotel lobby, by demanding the records electronically, or otherwise without any entry into a private space. Such an inspection would involve a smaller intrusion than in cases like *See* and *Barlow's*. "An entry into the public lobby of a motel and restaurant for the purpose of serving an administrative subpoena is scarcely the sort of governmental act which is forbidden by the Fourth Amendment." *Donovan* v. *Lone Steer, Inc.*, 464 U.S. 408, 413 (1984). Hotel lobbies are defined as "public place[s]" under municipal law. LAMC § 41.59(A)(2) (2001). Indeed, *Lone Steer* distinguished *See* on the grounds that serving a subpoena in a hotel lobby was "quite different" from warrantless inspections that require entry into a private place of business. See *Lone Steer*, 464 U.S. at 414.

Hotels also have little privacy interest in the required information. Guests themselves have no reasonable expectation of privacy in the information recorded by the hotel operator. See *United States* v. *Miller*, 425 U.S. 435, 442-443 (1976); Pet. App. 8. Businesses also must frequently disclose similar information about past transactions to authorities. *E.g.*, *California Bankers Ass'n* v. *Shultz*, 416 U.S. 21, 59-67 (1974) (*California Bankers*). Indeed, Los Angeles hotels must already disclose much of the same information to comply with the "transient occupancy tax." See LAMC § 21.7.11 (2000).

The court of appeals found that "customer lists, pricing practices, and occupancy rates," are "commercially sensitive." Pet. App. 6-7. But hotels typically advertise their prices, including online; California law mandates that hotels must conspicuously post their room rates, Cal. Civ. Code § 1863 (West 2010); and the familiar "no vacancy" sign on a motel informs the public about occupancy. An inspection also would not reveal customer *lists*, pricing *practices*, and occupancy *rates* unless it involved collecting and analyzing registry information in the aggregate. An inspection that merely involves viewing the registry without copying it, or that involves copying only a handful of records, would impose little or no intrusion into any such broader commercial interests.

3. Section 41.49 also tightly limits police discretion. Cf. *Maryland* v. *King*, 133 S. Ct. at 1969-1970 ("The need for a warrant is perhaps least when the search involves no discretion that could properly be limited by the interpo[lation of] a neutral magistrate between the citizen and the law enforcement officer." (citation omitted)). Unlike in *Camara*, *See*, or *Barlow's*, Sec-

tion 41.49(3)(a) does not permit a wide-ranging inspection of a place (or a wide-ranging demand for documents) to search for a variety of possible violations. Rather, Section 41.49 inspections are confined by statute to a tightly limited scope. Section 41.49 authorizes inspection of only one thing: the registry. Section 41.49 defines precisely what information must be made available, how it must be kept, for how long (typically 90 days), and where it must be stored (in or adjacent to the lobby). See LAMC §§ 41.49(1), (2)(a), (3)(a) and (3)(c). Section 41.49 also restricts the timing and manner of a search: "Whenever possible, the inspection shall be conducted at a time and in a manner that minimizes any interference with the operation of the business." LAMC § 41.49(3)(a). An officer could ask the hotel operator whether a guest is staying there; view a single page of entries; or even view a single entry to learn whether a person is currently a guest. If a hotel maintains the information electronically, it could print out the requested information and nothing more.

Affording an opportunity for pre-compliance judicial review thus would not only frustrate the deterrence purpose of the search, see pp. 25-26, *supra*, it would also afford little benefit in cabining police discretion or safeguarding interests protected by the Fourth Amendment.

B. Pre-Compliance Judicial Review Is Not Necessary To Render Section 41.49 Inspections Constitutional

The court of appeals erred in concluding that this Court has "already * * * struck" the Fourth Amendment balance as to the reasonableness of Section 41.49 inspections. Pet. App. 9-10. The court of appeals interpreted *Lone Steer* and *Oklahoma Press*

Publishing Co. v. *Walling*, 327 U.S. 186 (1946), as establishing both a substantive requirement and a procedural requirement that extended to all Section 41.49 inspections. First, the government may not demand access to business records unless the demand is "sufficiently limited in scope, relevant in purpose, and specific in directive so that compliance will not be unreasonably burdensome." Pet. App. 11 (quoting *See*, 387 U.S. at 544). Second, "[t]he party subject to the demand must be afforded an opportunity to 'obtain judicial review of the reasonableness of the demand prior to suffering penalties for refusing to comply.'" Pet. App. 12 (quoting *See*, 387 U.S. at 545); see *Lone Steer*, 464 U.S. at 415; *Oklahoma Press*, 327 U.S. at 208-209.

The court of appeals recognized that Section 41.49 itself "appear[ed] to satisfy" the substantive requirement "by adequately specifying (and limiting the scope of) the records subject to inspection." Pet. App. 11-12. But it nonetheless concluded that *Oklahoma Press* and *Lone Steer* required pre-compliance judicial review, which it described as an "essential procedural safeguard against arbitrary or abusive inspection demands." *Id.* at 12. That conclusion was unfounded.

1. This Court has not "already * * * struck" the constitutional balance here. This Court has never assessed the constitutionality of any inspection of a hotel registry, much less the validity of every possible inspection under this particular scheme. And when evaluating the constitutionality of warrantless inspections of a business for fire-code violations, this Court emphasized that "[a]ny constitutional challenge to such programs can only be resolved, as many have been in the past, on a case-by-case basis under the

general Fourth Amendment standard of reasonableness." *See*, 387 U.S. at 546.

The procedural requirement of *Oklahoma Press* and *Lone Steer* does not logically apply when the law itself provides adequate substantive protections. As the court of appeals itself recognized (Pet. App. 11-12), judicial review is not needed to ensure Section 41.49 inspections are "sufficiently limited in scope, relevant in purpose, and specific in directive" because Section 41.49 already ensures just that. See pp. 29-30, *supra*.

The narrowness of Section 41.49 inspections contrasts with *Oklahoma Press* and *Lone Steer*, which addressed administrative subpoenas under the FLSA. The FLSA authorizes the Secretary of Labor to "require by subpoena * * * the production of *all* * * * documentary evidence relating to *any* matter under investigation." 15 U.S.C. 49 (emphases added); 29 U.S.C. 209. And the Secretary has broad authority to "investigate and gather data regarding the wages, hours, and other conditions and practices of employment * * * and investigate such facts, conditions, practices, or matters as he may deem necessary or appropriate to determine whether any employer is violating the Act." 29 U.S.C. 211(a); see *Lone Steer*, 464 U.S. at 409 n.1, 411 n.2. This Court thus found that judicial review plays an important role in ensuring that FLSA subpoenas are "sufficiently limited in scope, relevant in purpose, and specific in directive so that compliance will not be unreasonably burdensome." *See*, 387 U.S. at 544; see also *Lone Steer*, 464 U.S. at 415; *Oklahoma Press*, 327 U.S. at 208-209. But here, judicial review of Section 41.49 inspections would do little or no substantive work because Section

41.49 itself ensures that inspections are appropriately tailored. Indeed, it is unclear what test a court would even apply in reviewing an inspection demand and on what basis, if any, a court could deny such a request.

The court of appeals suggested that a neutral magistrate could provide a check against abusive inspections. Pet. App. 12. But respondents have made no showing that Section 41.49's extensive ex ante safeguards, coupled with existing ex post remedies, provide inadequate protection from abuse. For example, Section 41.49(3)(a) mandates that, "[w]henever possible, the inspection shall be conducted at a time and in a manner that minimizes any interference with the operation of the business." *Ibid.* A hotel may be able to resist a penalty if officers violated that provision—or seek a narrow fact-based injunction.

Furthermore, unlike in *Oklahoma Press* or *Lone Steer*, requiring pre-enforcement review here would obstruct the operation of the regulatory scheme. Pre-enforcement review did not materially alter the scheme in *Oklahoma Press* or *Lone Steer*: FLSA subpoenas already provided the recipient advance notice before documents had to be produced, and thus invariably involved some delay. But adding delay and providing notice would be problematic here, where notice and delay can defeat the purpose of Section 41.49 inspections. Under Section 41.49, the possibility of a surprise inspection, backed by penalties, encourages compliance with the identification and recordation requirements. But if the hotel operator could refuse to comply and demand judicial review, hotels would have both notice and opportunity to fill in the information retroactively—or even to forge or falsify records. This could reduce the frequency with which

hotels demand identification and thereby increase the anonymous use of hotel rooms as a place for prostitution, drug dealing, or other crimes. Similarly, if officers are searching for a missing person, under Section 41.49 they may quickly inspect any hotel's registry to see if she is there. With pre-compliance judicial review, however, any hotel owner could refuse to answer until the officer obtains a subpoena. This delay could increase the likelihood that the missing person moves elsewhere before she is found.

2. Section 41.49 inspections are constitutional for similar reasons that justified the required financial disclosures upheld in *California Bankers*. That case addressed a challenge that banks brought to the requirement, under the Bank Secrecy Act of 1970, Pub. L. No. 91-508, 84 Stat. 1114, that financial institutions file reports disclosing details about domestic transactions in currency more than $10,000. 416 U.S. at 25-26, 37-39. The required reports contained the name, address, occupation, and social security number of the person conducting the transaction; "a summary description of the nature of the transaction"; "the type, amount, and denomination of currency involved"; "a description of any check involved in the transaction"; "the type of identification presented"; and "the identity of the reporting financial institution." *Id.* at 39 n.15.

The Court had "no difficulty" determining that these mandated disclosures were constitutional. *California Bankers*, 416 U.S. at 66. The Court explained that "corporations can claim no equality with individuals in the enjoyment of a right to privacy." *Id.* at 65 (quoting *United States* v. *Morton Salt Co.*, 338 U.S. 632, 652 (1950)). And in the context of required busi-

ness disclosures, the Court explained, the "gist" of the Fourth Amendment's protection "is in the requirement * * * that the disclosure sought shall not be unreasonable." *Id.* at 67 (citation omitted). The Court determined that the "regulations [did] not impose unreasonable reporting requirements on the banks." *Ibid.* The Court observed that much of the information a bank had to report the bank "already possesse[d] or would acquire in its own interest." *Ibid.* "To the extent that the regulations * * * require the bank to obtain information from a customer simply because the Government wants it," the Court concluded, "the information is sufficiently described and limited in nature, and sufficiently related to a tenable congressional determination as the improper use of transactions of that type in interstate commerce, so as to withstand" Fourth Amendment scrutiny. *Ibid.*

Like the mandated disclosures under the Bank Secrecy Act, Section 41.49 delimits narrowly and precisely what information hotel operators must disclose, and even without the ordinance's collection requirements hotel operators would already possess much if not all of that information. As in *California Bankers*, Section 41.49's inspection requirement is also closely tailored to the governmental interests served by the ordinance. Accordingly, the constitutionality of Section 41.49 inspections follows from *California Bankers*.

CONCLUSION

The judgment of the court of appeals should be reversed.

Respectfully submitted.

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AMICUS CURIAE BRIEF

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IN THE
Supreme Court of the United States

CITY OF LOS ANGELES
Petitioner
v.
NARANJIBHAI PATEL ET.AL
Respondents

ON WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE NINTH CIRCUIT

BRIEF OF ASIAN AMERICAN HOTEL OWNERS ASSOCIATION AS AMICUS CURIAE IN SUPPORT OF RESPONDENTS

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BRIEF OF *AMICUS CURIAE*

Pursuant to Supreme Court Rule 37, the Asian American Hotel Owners Association (AAHOA) submits this *Amicus Curiae* brief in support of the respondents.[1]

STATEMENT OF INTEREST

Established in 1989, AAHOA is a trade organization that represents more than 14,000 small business owner-members who collectively own over 20,000 properties (which include nearly two (2) million guest rooms) amounting to over 40% of all hotels in the United States. AAHOA members employ over 600,000 employees, accounting for nearly $10 billion in payroll annually. At least six (6) of the Plaintiffs in the consolidated cases, and respondents before the Court, are AAHOA members.

AAHOA membership chiefly comprises first, second and third generation Indian Americans who have excelled as entrepreneurs and have found a particular niche in the hospitality industry. More than 75% of the hotels owned by AAHOA members can be categorized in the industry as "limited service" (as opposed to "full service") hotels. These properties forgo certain amenities, such as on-site restaurants and room service, and hoteliers are able to offer more modest prices for the accommodations. 67% of the nearly two (2) million guest rooms rented by AAHOA members are

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[1] Pursuant to rule 37.3(a), All parties have provided blanket consent for the filing of this brief. Pursuant to Rule 37.6, Amicus Curiae certify that no party's counsel authorized this brief in whole or in part and that no person or entity, other than amici, their members or their counsel have made a monetary contribution to the preparation or submission of this brief.

affiliated with franchise branded hotels. Headquartered in Atlanta, AAHOA promotes in the interests of its members through programs and initiatives in advocacy, industry leadership, professional development, membership benefits and community service.

As representatives of hotel owners and operators, AAHOA maintains a significant interest in protecting the privacy rights of hoteliers and the records they keep. Similarly, AAHOA is interested in ensuring that the Court does *not expand its interpretation of a "pervasively regulated" industry to include hotel businesses. AAHOA urges the Court to affirm the decision rendered by the 9th Circuit.*

SUMMARY OF ARGUMENT

Petitioner's brief unfairly maligns hotel and motel operators by suggesting that they are complicit in crimes. That description is unsubstantiated and offensive. Petitioner particularly focuses its arguments on limited service and budget hotel properties and implies that these places invite criminal activities simply by virtue of the relatively low costs rent rooms there.

Further, Petitioner suggests that these properties are a magnet for illicit business and can seem to contemplate no legitimate purpose for the existence of these establishments.

In fact, these properties serve middle and lower income guests who are attracted by more reasonable rates. Hoteliers can offer lower cost rooms relative to

"full service" properties because they are able to avoid certain amenities that raise the prices of higher end properties such as on-site restaurants, room service and other pricier conveniences.

Many hotel owners operate their businesses personally, along with their families. Criminals present a safety risk to people and property, creating personal risks for hoteliers and their families, and also business risks. Criminals may cause property damage, resulting in higher costs for repairs and security measures and they drive away customers who avoid hotels with poor ratings from previous customers.

Further, hoteliers have considerable interests in preventing criminal activity on their properties including, ensuring safety for themselves, their families and their guests, preventing property damage, preserving essential franchise agreements and establishing a loyal base of repeat customers.

Petitioner also argues that hotels are in practice, and should be considered by this Court, to be a "pervasively regulated business," *New York v. Burger*, 482 U.S. 691 (1987). However, Petitioner fails to explain the necessity of this broad rule for hotels and further fails to explain why pre-compliance judicial review would obstruct the purpose of the law.

Hoteliers are overwhelmingly supportive of efforts to end crime at their hotels, and are willing to cooperate with the police to that end. However, ordinances like LAMC § 41.49 are far too easily used as a vehicle to

harass hotel owners and their employees, without producing any meaningful benefit to public safety. AAHOA therefore believes that pre-compliance judicial review is essential to making Hotel Guest Registry inspections effective, fair, and lawful.

ARUGMENT

I. Petitioner's description of limited service and budget properties is inflammatory and erroneous.

To justify its intrusive searches and the police harassment of hotel owners, petitioners attempt to characterize their businesses as "parking meter" motels that exploit the prevalence of crime in certain communities for profit. That description is inaccurate for two critical reasons. First, it is overwhelmingly against hoteliers' interests to actively sanction or tacitly permit illegal activities at their hotels. Second, hoteliers and their guests have many lawful reasons to prefer limited service and budget properties over more full service ones.

The Franchise business model is another important factor incentivizing hoteliers to ensure lawful activities prevail at their properties. Franchise agreements are the cornerstone of the lodging industry, as a majority of properties are licensed by a national brand. Franchise agreements provide hoteliers with marketing assistance, industry specific infrastructure and technology, loyalty programs and strategic support, in exchange for fees and royalties. For hoteliers, the success of a hotel in a given market often depends on the affiliation with a franchisor. Brands require certain standards of accommodation and quality in

order allow use of their names and resources. Similarly, customers come to expect this uniform national standard and will seek lodging options based on a particular brand.

The franchise model is intolerant of criminal activity. Generally, a franchisor has an absolute right to terminate the franchise for a single instance of crime at a hotel. This has an immediate financial impact on the hotel owner, because once the franchise flag is lost, owners lose marketing assistance and room revenues and are excluded from the brand support system. Premature termination of the franchise agreement also imposes liquidated damages liability against the hotel owner. The downward spiral of reduced occupancy and revenues, combined with the high fixed and operating costs of owning, and operating the hotel can result in the total loss of the hotel business. Franchisees have to devote thousands of dollars to remedy the loss of flag. Hotel franchisees that operate multiple hotels sometimes face termination of all hotels by the Franchisor as a direct result of criminal activity at a single hotel. In light of these severe consequences, hotel owners are incentivized to prevent crimes on their properties.

Petitioner's characterization is also inaccurate because it obscures the myriad reasons why hoteliers and guests prefer limited service hotels. Petitioner strongly implies that the only reason somebody would wish to use these properties is to engage in criminal activity. Nothing could be further from the truth. Approximately three quarters of the hotels owned by AAHOA members are limited service or budget

properties. Many hoteliers favor this business model because of the considerably lower startup and operating costs, along with less overhead than larger properties that offer extra amenities. Many guests likewise prefer these economy priced hotels. Middle and low income travelers seeking affordable lodging opt to use these hotels, which do not have extravagant lobbies, restaurants, or conference facilities that these travelers would find unnecessary.

Others who do not have stable finances or access to credit use budget hotels as residences. These people may be unable to afford rents for apartments or traditional housing options, but are able to pay the more reasonable hotel fees. Further, guests may be temporary laborers who do not require long term housing and are unwilling or unable to commit to extensive leases. Limited service and budget hotels provide these guests with the necessary flexibility to adapt to their circumstances.[2]

Many of these people may also prefer to rent rooms by the hour rather than nightly because they may only need a temporary place to rest or to clean up after a shift. Disparaging hoteliers and their guests by referring to properties as "parking meter motels" and implying the only reasonable use for limited service

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[2] Petitioner itself has recognized the utility of affordable motel housing. The City of Los Angeles has requested that hotel operators house the homeless population, and has provided vouchers to the homeless so that they can take advantage of those opportunities. *See* LAMC § 41.49(4) (describing rentals using housing vouchers). The motel owner community, including many AAHOA members, have provided this service in cooperation with the city.

establishments must be for criminal behavior is a highhanded value judgment against working class Americans and small business owners.

Petitioner's insinuation that shedding "sunlight" on the guests staying in budget motels will ultimately benefit society is offensive. All hotel guests whether wealthy or not desire and deserve privacy and security in their hotel rooms. That is part of the experience of feeling at home, which is part of what guests look for in a hotel. In some cases, privacy is essential to guests' safety. For example, somebody fleeing domestic abuse at home might have nowhere else to go, and might check into a budget motel in order to be safe while she seeks help. In that case, the hotel provides a safe haven, and its willingness to safeguard the guest's privacy is key to her wellbeing. Petitioner's desire to make guest activities totally transparent risks trampling these rights.

Finally, it bears noting that even though petitioner spends its time discussing the need to curb crime in "parking meter" motels, it notes that even "establishments as reputable as the "Mayflower Hotel" may be venues for crime. Petr. Br. 2. LAMC § 41.49 authorizes inspections of the registry of every single hotel property in Los Angeles, for any reason the police see fit to inspect it, at any time. Thus, even if Petitioner's description is accurate with regard to a few outlier motels, the ordinance it has enacted permits the police to harass myriad unrelated business owners in order to compromise the privacy of their guests.

II. Hotel owners use guest data, including the records described in LAMC § 41.49, for ordinary business purposes.

Petitioner suggests that the hotel owners only keep registries because LAMC § 41.49 requires them to do so. That is incorrect. Hotel owners independently have an interest in knowing who is staying at their properties and for what purpose the rooms are being used. Thus even if LAMC § 41.49 did not exist, hotel owners would still keep registry information on site, and would strive to keep it private.

This data serves important business purposes. Hotels keep guest data so that they can identify both new and repeat customers, keep track of occupancy rates, and prepare accurate records for tax Purposes. If a claim later arises in connection with a room, e.g., if damage occurs, then the hotels will need guest data in order to pursue the claim. Similarly, hotel owners who file applications for loans, or who seek to sell their property, use occupancy records in order to prove the value of their business.

Franchise hotels are often required by their franchise agreements to keep guest data for multiple years, along with data regarding revenues finances, operations, marketing and other aspects of the hotel's business. This data is used by franchisors in evaluating whether hotel owners should be eligible for additional franchise opportunities, and also for evaluating the renewal of franchise agreements.

All of this data is kept private, like any other sensitive business information. If a hotel was careless

with guest data, and a breach occurred, it would be possible, and indeed likely, that many guests would look unfavorably on the hotel, would write negative reviews about it, and would refuse to stay there in the future. Even if the guests did not discover the breach, a leak of guest data could place the hotel at a competitive disadvantage. Consequently, hotel owners strive to protect guest information from disclosure.

Additionally, the data that hotels collect from guests is often broader than the data required by ordinances like LAMC § 41.49. In addition to collecting identifying information as required by the ordinance, hotels often collect information about loyalty programs, about the purpose of a guest's stay, and about their preferred amenities. This is further evidence that guest information serves ordinary business purposes. The City should not be able to destroy the hoteliers' property or interest in this information merely by requiring that some of it be collected.

III. Hotels are not pervasively regulated

Hotels should not be regarded as "pervasively regulated" under *New York v. Burger*, 482 U.S. 691, 693 (1987), because neither the amount nor the nature of the regulation of the industry eliminates all expectation of privacy. *See Marshall v. Barlow's Inc.*, 436 U.S. 307, 313 (1978).

Most of the laws that apply to hotels are generally applicable, *e.g.*, laws relating to the cleanliness of commercial premises, or antidiscrimination statutes. The laws that are specific to hotels for example the law

requiring hotels to give guests the option of not having their towels and linens laundered, LAMC § 121.08(A)(12) overwhelmingly are not enforced through intrusive or regular inspections that would vitiate an expectation of privacy. And even when regulatory inspections are authorized as they are to inspect whether drinking utensils are sanitary, Cal. Code Regs. tit. 17, § 30858 they seldom occur.

This type of sporadic regulation cannot qualify for the "pervasively regulated industries" exception. Otherwise, almost every business that allows customers to walk through the door would be regarded as pervasively regulated, and the exception would swallow the rule. And of course, the City cannot rely on LAMC § 41.49 itself to prove that the industry is closely regulated, because that would produce the same result.

The Court should be especially wary of extending the pervasively regulated industries exception to hotels because doing so would compromise not only the businesses' privacy, but also the privacy of the millions of people who use hotels. Rooms are the guests' homes for the duration of their stay, and the Court has recognized that hotel guests, like tenants in houses, are have strong privacy rights. *Stoner v. California*, 376 U.S. 483, 490 (1964). That substantial privacy interest weighs against finding hotels to be within the "pervasively regulated industries" exception because the rationale of the exception is that by associating with a particular business, people implicitly forfeit their right to privacy. That is patently untrue in the hotel context for both the owners and the guests.

This fact also distinguishes the case of hotels from the junkyard in *Burger*. In *Burger*, the proprietor of the junkyard operated "an open lot with no buildings," which contained "among other things, vehicles and parts of vehicles." 482 U.S. at 694. The Court was willing to find that the owner of such a business had a diminished expectation of privacy over that stock. But hotel rooms are not like vehicle parts, and hotel guests' privacy should not be treated so lightly.

It is also no answer to say that LAMC § 41.49 does not permit inspections of rooms directly, but instead only of records. The entire purpose of the ordinance, as explained by petitioner, is to send a signal to the occupants of those rooms that the police are watching them, so that they must behave.

IV. Warrantless inspection laws like LAMC § 41.49 are not necessary to deter crime, and they permit police harassment of hoteliers and their employees.

Petitioner's principal argument for the necessity of LAMC § 41.49 is that "sunlight is the best of disinfectants," *i.e.*, that transparency regarding the identity of hotel guests will deter them from using hotel rooms for criminal purposes. For the reasons stated above, that is factually inaccurate and inimical to basic notions of privacy. But even assuming that the premise is true, it does not explain why warrantless inspections of guest registers are necessary to ensure the accuracy of records.

All of law enforcement's legitimate objectives can be accomplished under a regime that gives hotel owners or their employees the opportunity to obtain pre-compliance judicial review. A broader inspection requirement is not necessary, and fails to limit officer discretion as required by the Fourth Amendment.

Because the records have independent business purposes, hotel owners have no incentive to falsify them. Deliberate falsification of the records could also jeopardize a hotel's relationship with its franchisor, which is a risk that no hotel owner would be willing to take.

Moreover, because hotel guest records often contain more information than the bare minimum required by law, permitting the police to peruse them at will poses a threat to guest privacy: the police will observe details including not only the guest name, but also the nature of the guest's stay, the guest's loyalty program status with the hotel, any special requests or amenities offered to the guest, etc. Issues well beyond the scope of a search designed for criminal deterrence.

Because LAMC § 41.49 does not require pre-compliance judicial review, it also authorizes police harassment of hotel owners and their employees. These concerns are not hypothetical.[3] Hoteliers have

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[3] In 2006, a group of AAHOA members in Los Angeles formed the North East Los Angeles Hotel Owners Association (NELAHOA) specifically to address abusive enforcement of LAMC § 41.49. As reported to AAHOA by NELAHOA hoteliers, the enforcement involved repeated and intrusive tactics, immediate demand for access to registries during busy hours and demands to access back offices. These actions disrupted hotel operations, inconvenienced

reported police inspections late at night or very early in the morning, and have reported aggressive police behavior in enforcing the ordinance.

For example, the police have the power to return to a property several times a day, which they often do, in an attempt to find petty violations of the ordinance, or to seek out suspects in unrelated crimes. Even when the police find no violation, their presence is likely to make guests and employees uneasy, and thus disrupt the ordinary course of business.

The police can also make unreasonable demands of desk clerks, who are seldom educated about their legal rights, and are ill-equipped to protect the guests' privacy when confronted by police officers. For example, it is not unusual for officers, having discovered somebody's name in the register, to further demand that the desk clerk escort them to that person's room.

Apart from the issue of harassment, the lack of pre-compliance judicial review facilitates pretextual police searches. In the past, for example, officers have taken a stack of registry cards to their patrol cars, where they have then run the names in the registry through a list of fugitives and suspects in order to find criminals. These sorts of criminal investigations

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guests and created a reputation of criminal behavior at the hotels. Failure to comply with these demands resulted in searches of offices, file cabinets, drawers and on-site manager apartments. Law enforcement would also make demands for master keys and begin door to door investigations while awakening guests to verify information on their registration cards.

require a warrant, but the police use LAMC § 41.49 to bypass that constitutional requirement.

Permitting the hotel owner or desk clerk to seek review by a magistrate in response to an inspection demand would curb the potential for harassment and abuse by deterring the police from making unreasonable requests in the first instance, and would further permit a neutral magistrate to deny requests that are unrelated to the goals of the ordinance. At the same time, it would do nothing to prevent the police from making legitimate requests to ensure the accuracy of records.

IV. CONCLUSION

For the foregoing reasons, the judgment of the Ninth Circuit should be affirmed.

Dated: January 30, 2015
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AMICUS CURIAE BRIEF

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BRIEF OF CALIFORNIA, ARIZONA, HAWAII, MAINE, MICHIGAN, PENNSYLVANIA AND SOUTH CAROLINA AS AMICI CURIAE SUPPORTING PETITIONER

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QUESTION PRESENTED

The States will address the following question:

Whether a local law allowing law enforcement officers to conduct warrantless inspections of hotel guest registries is facially constitutional under this Court's cases permitting similar inspections of limited scope in the context of highly-regulated industries.

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INTEREST OF THE AMICI STATES

The amici States submit this brief in support of the constitutionality of the inspection provision of the City of Los Angeles's hotel guest registry ordinance, Los Angeles Municipal Code § 41.49(3)(a). States and their political subdivisions have a long tradition of close regulation of the hotel and motel industry to protect the health and welfare of the public and to foster the industry itself, both of which are of vital interest to the States. Thirty-one States have state or local guest registry and inspection laws similar to the one at issue in this case. The States have a substantial interest in confirming that such regulatory regimes are constitutional so long as properly applied.

SUMMARY OF ARGUMENT

Los Angeles Municipal Code § 41.49 directs hotel and motel operators to maintain a guest registry recording information such as guest names, visit dates, and room rates, and to make the registry "available to any officer of the Los Angeles Police Department for inspection." § 41.49(3)(a). In the special context of the hotel and motel industry, the ordinance's provision for warrantless inspection of guest registries is facially constitutional under the Fourth Amendment.

The touchstone of the Fourth Amendment is reasonableness. In the context of highly-regulated industries, this Court has repeatedly held that warrantless searches can be reasonable when they are

made pursuant to a regulatory scheme that serves a substantial interest, are necessary to further that interest, and are properly limited in time, place, and scope. *New York* v. *Burger*, 482 U.S. 691 (1987); *United States* v. *Biswell*, 406 U.S. 311, 315 (1972); *Donovan* v. *Dewey*, 452 U.S. 594, 599-600 (1981). Section 41.49(3)(a) falls squarely within this precedent.

Section 41.49 is a typical guest registry ordinance, similar to others found across the United States. Comparable requirements have been imposed on innkeepers since the Middle Ages. They protect guests as consumers and, at the same time, reduce anonymity, making places of transient accommodation less attractive for criminal activity. A responsible innkeeping industry, in turn, encourages travel and tourism, the benefits of which flow to the larger community.

It is not facially unreasonable under the Fourth Amendment for the City's ordinance to authorize city police officers to perform limited inspections of a hotel's guest registry, without prior judicial approval, "at a time and in a manner that minimizes any interference with the operation of the business." § 41.49(3)(a). Here, as in other highly regulated industries, such limited inspections are a necessary and expected component of a regulatory regime that serves important public interests.

In reaching a contrary conclusion, the court of appeals erred by failing to account for the reduced

expectation of privacy in business records that operators are required to keep at commercial properties and by failing to acknowledge that the innkeeping industry is closely regulated. Under circumstances like those present here, this Court's cases have recognized that it is constitutionally reasonable to authorize warrantless spot-checks to ensure compliance with a valid regulatory regime. Absent some special, as-applied showing of improper government conduct, it does not offend the Constitution to allow a police officer to enter a hotel or motel lobby at a commercially reasonable time, approach the front desk, and inspect a copy of the guest registry that the operator is legally required to maintain.

ARGUMENT

I. Under Appropriate Circumstances, Close Regulation of Certain Businesses May Include Limited Warrantless Inspections

Under the Fourth Amendment, "the ultimate measure of the constitutionality of a governmental search is 'reasonableness.'" *Maryland* v. *King*, 133 S. Ct. 1958, 1969 (2013) (some internal quotation marks omitted). What is reasonable "'depends on all of the circumstances surrounding the search or seizure and the nature of the search or seizure itself.'" *Skinner* v. *Ry. Labor Executives' Ass'n*, 489 U.S. 602, 619 (1989) (quoting *United States* v. *Montoya de Hernandez*, 473 U.S. 531, 537 (1985)). As a categorical matter, the permissibility of a particular government

practice may be judged by balancing its intrusion on privacy against the promotion of legitimate governmental interests. *Id.*

Typically, that balance will require the issuance of a warrant before government officers may conduct a search. *Skinner*, 489 U.S. at 619. One established exception to that rule, however, permits certain warrantless administrative inspections of closely regulated businesses. As this Court explained most recently in *New York* v. *Burger*, 482 U.S. at 700, this exception may apply where a business operates in a "closely" or "pervasively" regulated industry. In that situation, a reduced expectation of privacy flows in part from the commercial nature of the enterprise. The expectation of privacy in commercial premises "is different from, and indeed less than, a similar expectation in an individual's home." *Id.* at 700; *Dewey*, 452 U.S. at 599-600 (commercial property owner does not have interest "in being free from any inspection"). Likewise, the operator of a business may have a reduced expectation of privacy, at least as against government inquiries or inspection, in information that the government validly requires it to collect.[1]

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[1] This facial challenge has been brought by operators of purely commercial premises. *See, e.g.*, Pet. App. 5. Other issues might be presented in a case involving, for example, a business operating out of premises that also served as a private home. This case also does not involve any challenge to the underlying

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The operator of a closely regulated business may also have a reduced expectation of privacy in particular premises or information because of the "history of government oversight" of the industry involved. *Burger*, 492 U.S. at 700. "Certain industries have such a history of government oversight that no reasonable expectation of privacy could exist over the stock of such an enterprise." *Id.* (quoting *Marshall* v. *Barlow's, Inc.*, 436 U.S. 307, 313 (1978)) (internal citations omitted). Consequently, "[w]hen an entrepreneur embarks upon such a business, he has voluntarily chosen to subject himself to a full arsenal of governmental regulation." *Id.* In effect, the operator has agreed "to accept the burdens as well as the benefits of the[ ] trade." *Id.* Thus, under the closely regulated business exception, "as in other situations of 'special need' where the privacy interests of the owner are weakened and the government interests in regulating particular businesses are concomitantly heightened, a warrantless inspection may well be reasonable within the meaning of the Fourth Amendment." *Id.* at 702.

Applying these principles, the Court has held that the Fourth Amendment permits certain warrantless administrative searches of automobile junkyards, *id.* at 712, mining facilities, *Dewey*, 452 U.S. at 599-600 and licensed firearm dealers, *Biswell*, 406 U.S. at 315.

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requirement that the operators collect and maintain certain information. *See id.*

II. Warrantless Spot Checks of Guest Registries Are Reasonable in the Context of the Hotel Industry

Los Angeles's authorization of warrantless inspection of guest registries is facially reasonable under *Burger* The hotel and motel industry is "closely regulated." The City's registry ordinance serves important consumer protection and crime reduction interests, and warrantless spot-checks are an important method to ensure compliance with its requirements. The ordinance gives hotel and motel operators ample notice that their registers are subject to inspection. In the circumstances of this industry, it is reasonable to authorize police officers to make limited entries, at reasonable times, to spot-check the guest registries that operators are required to maintain.

A. The Hotel and Motel Industry Is Closely Regulated

In determining whether an industry is closely regulated, this Court has looked both to the history and, more importantly, the pervasiveness of regulation. *Dewey*, 452 U.S. at 600; *Burger*, 482 U.S at 703-706. As to pervasiveness, "[a]though the number of regulations certainly is a factor in the determination, the proper focus is on whether the regulatory presence is sufficiently comprehensive and defined that the owner cannot help but be aware that his property will be subject to periodic inspections

undertaken for a specific purpose.'" *Burger*, 482 U.S. at 703-705 n.15. With respect to guest registries, regulation is both longstanding and pervasive.

1. Innkeepers have long been subject to pervasive regulation

"The common-law relation of innkeeper and guest is of ancient origin." 19 Williston on Contracts, § 53-73 (4th ed. 2001) (citing *Cayle's Case*, 8 Coke 32a, 77 Eng. Resp. 520 (1584); *Burns* v. *Royal Hotel (St. Andrews)*, S.L.T. 309 (1958)). Since the Middle Ages, society has deemed the appropriate care of a traveler so important that attending to it, as innkeepers are expected to do, is considered necessary for the health and welfare of the public as a whole. Joseph Henry Beale, Jr., *The Law of Innkeepers and Hotels* 11 (1906) ("so far as was consistent with justice to the innkeeper, his inn was carried on for the benefit of the whole public; and so it became in an exact sense a public house"). "The business of keeping a hotel is closely related to the health and welfare of the public and has long been regarded as a thing affected with a public interest." *State* v. *Norval Hotel Co.*, 103 Ohio St. 361, 363 (1921).

The public interest in the operation of inns gave rise long ago to extensive government oversight. To ensure appropriate care of the vulnerable traveler, the common law imposed on innkeepers the duties to receive guests, provide adequate facilities, refrain from discrimination, charge fair rates, protect guests

against marauders, protect guests' property, and protect guests against fire. Beale 37-38, 46, 109, 118-119, 125-127. These duties distinguished an innkeeper from an ordinary business such as a tavern, which could turn "its guest out at the very moment when he most needed protection." *Id.* at 5. At the same time, the law also gave innkeepers substantial benefits. For instance, the common law authorized "innkeeper's liens," which permitted the innkeeper to seize the property of guests to secure payment. *Id.* at 175-176.

The same government interest in the safety and welfare of travelers came to be reflected in innkeeping laws across the United States. As one commentator observed shortly after the turn of the twentieth century, "the hotel keeper in the great cities of the United States derives his rights and traces his responsibilities to the host of the humble village inn of medieval England." Beale 9. By this time, 44 States had enacted laws incorporating and supplementing the innkeeper's rights and responsibilities under the common law. This growing body of law imposed additional obligations on innkeepers to protect the health and welfare of the public, while also granting additional benefits to foster the innkeeping industry. *Id.* at 307-534 (appendix of States' hotel- and motel-related laws).

The keeping of a "public guest register" was an integral component of this regulatory framework. "[A] public register in which its guests entered their names upon arrival and before they were assigned a

room" was one of the standard characteristics of an inn. Beale 21 n.40 (citing *Fay* v. *Pacific Improvement Co.*, 93 Cal. 253 (1891)). It helped to define and enforce the innkeeper's duty to protect a guest and the guest's property, and the innkeeper's right to payment. *Id.* at 99-100, 163-164, 171, 277-278, 377.

2. The modern hotel and motel industry remains pervasively regulated

As population, tourism, and mobility have increased, the pervasive regulation of the hotel and motel industry has continued. Each of the 50 States and the District of Columbia has legislation specifically regulating the hotel and motel industry, perpetuating the same core consumer and industry protections.[2]

California is representative, with an extensive array of regulatory provisions designed to protect both consumers and the industry. On the consumer side, consistent with long tradition, the State regulates advertising, including notices and offers concerning hotel and motel rates (Cal. Bus. & Prof. Code, §§ 17538.8, 17560-17568, 17568.5; Cal. Civ. Code,

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[2] *See, e.g.*, Norman G. Cournoyer & Anthony C. Marshall, *Hotel, Restaurant, and Travel Law* (3d ed. 1988), App. 1 (table listing each State's statutes concerning innkeeper liability), App. 3 (table listing each State's statutes concerning defrauding an innkeeper).

§ 1863); fire safety precautions, including criminalizing a failure to report a fire in a hotel or motel (Cal. Health & Saf. Code, §§ 13006.5, 13113.7, 13220, 17920.8); and the right to accommodations (Cal. Penal Code, § 365; Cal. Civ. Code, §§ 51-54.9). The State's regulation also concerns itself with such matters as access to alcohol cabinets (Cal. Bus. & Prof. Code, § 23355.2); sanitization and inspection requirements for utensils and other related equipment (Cal. Code Regs. tit. 17, §§ 30852-30858); and storage of flammable liquids (Cal. Code Regs. tit. 8, § 5537). On the industry-protection side, again in keeping with long tradition, the State regulates innkeepers' liability as depositories (Cal. Civ. Code, §§ 1859-1867); lien rights (Cal. Civ. Code, §§ 1861-1861.28); and eviction rights (Cal. Civ. Code, § 1868), and criminalizes the defrauding of innkeepers (Cal. Penal Code, § 537).

Protecting both the consumer and industry, California has enacted laws prohibiting misdirection of prospective hotel guests by taxicab operators and others (Cal. Penal Code, § 649). Finally, California has enacted criminal, quasi-criminal, and civil statutes to combat the use of inns for prostitution, drugs, and gambling. *See, e.g.*, Cal. Penal Code, § 316 (keeping of a disorderly house); *id.* § 11225 (authorizing nuisance abatement injunctions against premises such as hotels and motels used to conduct illegal gambling, prostitution and human trafficking).

Local governments also regulate the industry. The County of Los Angeles, for example, requires

a special license to operate (L.A. County Code § 7.50.040) and imposes its own guest registry and inspection requirement (*id.* §§ 8.20.020-8.20.060). The County also has a separate inspection requirement to monitor for compliance with transient occupancy taxes which are levied when a guest stays at a hotel. *Id.* §§ 4.72.040-4.72.080, 4.72.090-4.72.100. It imposes health and safety standards specific to hotel and motel guest rooms, such as requiring clean bedding, wash cloths, and other linens (*id.* § 11.20.320) and prohibiting overcrowding (*id.* § 11.20.310).

The City of Los Angeles likewise has enacted ordinances specifically regulating the operation and maintenance of hotels and motels. These include specific safety ordinances (L.A. Municipal Code §§ 57.4704.4.1, 57.4704.4.3); transient occupancy taxes, with collection, record keeping, and inspection requirements (*id.* §§ 21.7.1, 21.7.11); and the guest registry and inspection ordinance (*id.* § 41.49), a version of which has been in effect since 1899 (*see* L.A. Penal Ordinances, §§ 995, 997 (1899)).

In its 2006 formulation of the guest registration and inspection ordinance at issue here, the City limited the time, place and scope of the inspection provision to apply only to law enforcement, in one place—either the lobby or an adjacent office—and "at a time and in a manner that minimizes any interference with the operation of the business." *Id.* § 41.49(3). The City continued the practice of imposing criminal

penalties for failing to comply with record-keeping requirements. *Id.* § 11m.

The City's guest registration and inspection ordinance fits well within the tradition of industry regulation in the United States. Laws authorizing police to inspect guest registries have existed since the turn of the century and appeared to gain more popularity with the rise of automobile travel and tourist courts. *See, e.g.*, Mass. Gen. Laws Ann. ch. 140, § 27 (1918); N.H. ch. 68, Public Laws § 68:1 (1927); N.J. Stat. Ann. § 29:4-1 (1939); *Juengel* v. *City of Glendale et al.*, 164 S.W.2d 610, 611 (1942) (City of Glendale ordinance requiring tourist courts to keep guest register "open to the inspection of the mayor or city marshal and his deputies").

California's extensive, multi-tiered regulation of the hotel and motel industry—the combination of state and local oversight to protect the consumer and foster the hotel and motel industry—is mirrored throughout the United States.[3] Guest registry

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[3] Florida, for example, regulates the duty to accommodate, Fla. Stat. Ann. § 509.141, guest registry and inspection (*id.* § 509.101), property liability (*id.* § 509.111), door locking devices (*id.* § 509.211), and sanitary conditions including bedding (*id.* § 509.221). Hawaii regulates liens, Haw. Rev. Stat. § 486K-2, liability (*id.* §§ 486K-4–486K-6), sale of detained baggage (*id.* § 486K-3), guest registration (*id.* 486K-10), posting of laws (*id.* § 486K-7), and unfair competition (*id.* § 445-95.1). Iowa requires a license, Iowa Code Ann. § 137C, guest registry (*id.* § 137C.25E), biennial inspections (*id.* § 137C.11), and posting of rules (*id.* § 137C.25D, 481-37.2(137C)), and imposes standards for

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inspection ordinances in particular have been enacted by eight States—Indiana (Ind. Code Ann. § 16-41-29-2), Florida (Fla. Stat. Ann. § 509.101(2)), Massachusetts (Mass. Gen. Laws, ch. 140, § 27), Maine (Me. Rev. Stat. Ann. tit. 30-A, § 3821), New Hampshire (N.H. Rev. Stat. Ann. § 353:3), New Jersey (N.J. Stat. Ann. § 29:4-1), Wisconsin (Wis. Admin. Code DHS § 195.16); and the District of Columbia (D.C. Mun. Regs. tit. 14, § 1302.3)—and roughly 100 cities and counties across the country. Pet. App. 66-107; Pet. Br. 36 n.3.)

The comprehensive regulatory schemes governing the operation of hotels and motels in Los Angeles and throughout California make clear that innkeeping is a "closely regulated" industry in the State. Just as this Court observed about the mining industry, regulation in the field "is sufficiently comprehensive and defined that the owner of [a hotel or motel] cannot help but be aware that his property [or required records] will be subject to periodic inspections undertaken for a specific purpose." *Dewey*, 452 U.S. at 600. The existence of similarly pervasive regulation throughout the rest of the United States only bolsters that conclusion. *Burger*, 482 U.S. at 704 ("That other States besides New York have imposed similarly extensive regulations on

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guest rooms (*id.* § 481-37.2(137C)), bedding Iowa Admin. Code r. (§ 481-37.3(137C)), lavatories (*id.* § 481-37.4(137C)), glasses and ice (*id.* § 481-37.5(137C)), and room rates (*id.* § 481-37.7(137C)).

automobile junkyards further supports the 'closely regulated' status of the industry.").

In *Burger*, this Court held that automobile junkyards were "closely regulated" businesses in the State of New York because the operator was required to meet certain licensing requirements, obtain a license and pay a fee, maintain specified records, and display his registration to the public, and was subject to criminal penalties for failure to comply. *Id.* at 704-705. That was so even though the regulatory scheme was of "fairly recent vintage" (roughly 14 years old). *Id.* at 705. Hotels and motels are subject to far more comprehensive regulation, and have been for centuries. The court of appeals was thus wrong in concluding that the hotel industry has not been "subjected to the kind of pervasive regulation that would qualify it for treatment under the *Burger* line of cases." Pet. App. 13 n.2.

B. The City of Los Angeles Has a Substantial Interest in Requiring Guest Registration

This Court has recognized that protecting the health and welfare of the public constitutes a substantial governmental interest. *See, e.g.*, *Burger*, 482 U.S. at 708; *Dewey*, 452 U.S. at 603; *Biswell*, 406 U.S. at 315. Like many of the regulations governing the operation of a hotel or motel, Los Angeles's guest registry ordinance prescribes a business practice

designed to protect the health and welfare of the public.

First, as previously mentioned, the maintenance of a guest registry protects both the consumer and the innkeeper by providing a factual record that can help to fix and enforce their respective rights and liabilities.

Second, guest registries reduce anonymity at hotels and motels, which promotes personal accountability and discourages criminal activity. Karin Schmerler, Center for Problem-Oriented Policing, 1-2, 21, 25 (2005). As the Los Angeles City Council expressly found when amending § 41.49 in 2006, for example, "requiring certain minimum information to be maintained in hotel and motel registers and inspection of hotel and motel registers by the police department is a significant factor in reducing crime in hotels and motels." *Preamble*, Ord. No. 177966.[4]

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[4] *Preamble*, *available at* http://clkrep.lacity.org/onlinedocs/2006/06-0125_ord_177966.pdf; *see also* Jaime Ayala & Jennifer White, *Operation Spotlight*, Finalist, Herman Goldstein Award for Excellence in Problem-Oriented Policing 1, 5, 13-15 & App. 16, Tbls. A-D (2008) (noting that enforcement of guest registration and check-in procedures, among other better management practices, substantially reduced crime rate at crime-plagued motels), *available at* http://www.popcenter.org/library/awards/goldstein/2008/08-01(F).pdf; Gisele Bichler et al. *Curbing Nuisance Motels: An Evaluation of Police as Regulators*, Vol. 36, No. 2 Policing: An International Journal of Police Strategies & Management 437, 439-440, Tbl. 1 441-442, 444 (2013) (documenting reduction in calls for service for crime-plagued motels

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Hotels and motels that do not comply with guest registration requirements attract criminal activity by providing anonymity and a temporary place of concealment—in effect a safe haven—to commit crimes or avoid detection. *Id.*; *see also* Schmerler 21, 25; Ayala & White 1; National City Police Department Neighborhood Policing Team, *Paradise Motel Community Improvement Project*, Submission, Herman Goldstein Award for Excellence in Problem-Oriented Policing 1, 8, 10-11 (2002).[5]

As the Los Angeles Chief of Police observed in 2007:

> Hotels where patrons are not required to produce identification are often the backdrop for schemes of a criminal nature. Pimps and prostitutes rely heavily on hotels to conduct "Craigslist" prostitution. Potential "dates" are arranged using the Internet and the sexual acts conducted in the hotels. Robbery set ups are often executed in the hotels where potential customers purchasing sex from prostitutes are lured to these location to be robbed by pimps or their associates.

William J. Bratton, Interdepartmental correspondence 2 (2007), *available at* http://clkrep.lacity.org/onlinedocs/2006/06-0125_rpt_lapd_10-30-07.pdf; *see*

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in various cities following compliance with guest registry and check-in requirements, among other management changes).

[5] National City Police Dept. Policing Team, *available at* www.popcenter.org/library/awards /goldstein/2002/02-35.pdf.

also Schmerler 8, 12, 21-22 (describing similar criminal activity at poorly run motels and noting deterrence value of guest registration requirements).

The criminal activity also results in excessive calls for police service by these hotels or motels and the surrounding community. *Preamble*, Ord. No. 177966; Bichler et al. Tbl. 1 441-442, 444; Ayala & White 13-15 & App. 16, Tbl. A-D; Dennis Zine, *Motion to Amend Ordinance No. 177966* (Jan. 18, 2006).[6] This not only adds strain to already overburdened law enforcement, but inflicts social and economic damage to the surrounding community that results in a spiral of community decay. The increase in criminal activity threatens the personal safety of the people living and working in the area and harms businesses as residents and visitors seek to avoid unsafe places. Bichler et al. 439-440; Ayala & White 1-3.

The loss of visitors, in turn, harms the tourism industry as well as the hotel and motel industry. Schmerler 5; Bichler et al. 444. Los Angeles's tourism industry is independently of vital interest to the City. *See, e.g.*, *Preamble*, Ord. No. 177966. "Tourism is one of the most important industries in Los Angeles when it comes to job growth and economic impact." Emily Wallace et al. *Los Angeles Tourism, A Domestic and*

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[6] Zine, *available at* http://clkrep.lacity.org/onlinedocs/2006/06-125_mot_1-18-06.pdf.

International Analysis 1 (May 2014).[7] In 2013, total direct travel spending in California was $109.6 billion, and travel spending in California directly supported 965,800 jobs, with earnings of $34.1 billion. *See* VisitCalifornia.com.[8] These are substantial interests underlying Los Angeles's regulatory scheme.

C. Warrantless Registry Inspections Are Necessary to Ensure Compliance With the City's Guest Registration Requirements

The substantial public benefits resulting from the maintenance of guest registries cannot be realized without compliance on the part of hotel and motel operators. Effective inspections are necessary to ensure that compliance. In this case, as with firearms dealers, mines, and automobile junkyards, "if inspection is to be effective and serve as a credible deterrent, unannounced, even frequent, inspections are essential." *Biswell*, 406 U.S. at 316; *see also Dewey*, 452 U.S. at 603; *Burger*, 482 U.S. 710. And as in these other contexts, requiring a warrant—and certainly, as the court of appeals held, requiring advance notice and judicial review before the inspection requirement can be enforced—could reduce

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[7] Wallace et al., *available at* http://www.lachamber.com/clientuploads/Global_Programs/WTW/2014/LATourism_LMU_May2014.pdf.

[8] VisitCalifornia.com, *available at* http://industry.visitcalifornia.com/Find-Research/California-Statistics-Trends/.

inspections and undermine their effectiveness in encouraging compliance. This would frustrate the purposes of the underlying regulatory scheme—while offering little in the way of additional protection for operators' legitimate interests in return.

Frequent, unpredictable inspections foster compliance. A motel or hotel operator's understanding that the guest registry may be checked at any time creates an incentive to ensure that, at all times, entries are accurate, complete and up to date. If police officers were required to obtain a warrant before spot-checking guest registries, that additional step would add time and expense to the process, reducing the frequency and spontaneity of the checks, and eroding the desired understanding in the industry that continuous compliance is required.

Allowing for spontaneous spot checks ensures there is an element of "surprise," which also fosters compliance and can aid in detecting violations of the registry requirements. *See Burger*, 482 U.S. at 702-703, 710. Any foreknowledge of an inspection gives an unscrupulous hotel or motel operator time to obscure past non-compliance by altering or fabricating entries, rather than accurately maintaining records as guests actually come and go. *See Dewey*, 452 U.S. at 594 (noting ease of concealing mines' safety and health hazards). Here, the court of appeals held that a hotel or motel operator confronted with an officer's demand to inspect a guest register must be "afford[ed] an opportunity to 'obtain judicial review of the reasonableness of the demand prior to suffering

penalties for refusal to comply.'" Pet. App. 13. Under that holding, an operator is *necessarily* shielded from any possible element of surprise.

Perhaps (although this is surely not clear) the court's holding could be satisfied instead by requiring officers to obtain a warrant before any inspection; and in theory, such a warrant might be obtained and served without advance notice. *See Burger*, 482 U.S. at 722 n.8 (Brennan, J., dissenting). As the Court recognized, however, in both *Burger* and *Dewey*, as a practical matter "forcing inspectors to obtain a warrant before every inspection might alert .. owners or operators to the impending inspection, thus frustrating the purposes of the" regulatory program. *Id.* at 702-703 (citing *Dewey*). Allowing for warrantless compliance checks gives greater assurance of surprise and thus helps encourage compliance and prevent concealment of violations.

Moreover, the "surprise" necessary to further the regulatory scheme is not simply that the inspection be unannounced, but also that it occur in circumstances that will allow a police officer to establish compliance or non-compliance. *See Biswell*, 406 U.S. 316 (noting the need for "flexibility as to time, scope, and frequency" of inspection). Requiring a warrant before any spot check would eliminate the ability of an officer to follow up quickly on circumstances suggesting that a hotel or motel is not complying with the guest registry requirement. For instance, if an officer notices that many cars are entering and leaving a motel parking lot, or that an unusual number of

people are going in and out of a particular room, he may have reason to believe that the operator is not complying with the registry requirements and is thereby creating conditions conducive to crime. If the officer were required to obtain a warrant before approaching the operator to check the registry, the delay might make it much more difficult for the officer to check the registry against the observed activity and thus verify whether the registry was being properly maintained. *Cf. Burger*, 482 U.S. at 710 (noting that cars and parts "often pass quickly through an automobile junkyard[,]" making surprise "crucial").

Finally, given the nature of spot-check compliance inspections, requiring advance warrants would entail expense, delay, and potential frustration of purpose while providing little in the way of added protection for legitimate interests. When an officer seeks to conduct a search as part of a typical criminal investigation, requiring a warrant ensures that a neutral party, rather than the investigating officer, makes the determination that the proposed search is both justified by existing probable cause and properly limited in time, place, and scope. *See, e.g., Johnson* v. *United States*, 333 U.S. 10, 14 (1948). In contrast, in a compliance inspection scheme an officer is checking to make sure that a regulated business is complying with one of the many rules imposed on its operation—not asserting that there is probable cause to suspect specific wrongdoing. The standard appropriate for issuing any required warrant would thus be quite

different from that for authorizing an investigative search. *See Camara* v. *Municipal Court*, 387 U.S. 523, 538 (1967) (warrant may issue based on "reasonable legislative or administrative standards for conducting an area inspection"; indeed, "[t]he passage of a certain period without inspection might of itself be sufficient in a given situation"). Here, the statute reasonably permits inspection of a guest registry—but only the registry—in as non-disruptive a manner as possible. Requiring that each such inspection be pre-authorized by a neutral magistrate would offer little additional protection to any legitimate business or privacy interest. Any such requirement would, however, interfere significantly with the City's ability to ensure compliance with its regulatory scheme.

D. The City's Ordinance Gives Clear Notice of the Possibility and Permissible Scope of Compliance Inspection

Under *Burger*, a statute permitting a warrantless regulatory inspection must also "perform the two basic functions of a warrant," by "advis[ing] the owner that the search is being made pursuant to the law and has a properly defined scope" and, concomitantly, by "limit[ing] the discretion of the inspecting officers" in carrying out the search. 482 U.S. at 702; *cf.* U.S. Const., Amend. IV (warrant must "particularly describ[e] the place to be searched, and the persons or things to be seized"). The statute may satisfy these requirements by putting a business on notice that its commercial property "'will be subject

to periodic inspections undertaken for specific purposes'" and constraining discretion by "'carefully limit[ing] [the authorized inspection] in time, place and scope.'" *Burger*, 482 U.S. at 703.

Los Angeles's registry inspection provision satisfies these requirements. First, the provision informs motel or hotel operators that periodic inspection of a guest registry by a police officer is authorized by law. *See Burger*, 482 U.S. at 711. Operators thus know that registry inspections "do not constitute discretionary acts by a government official, but are conducted pursuant to statute." *Id.* (citing *Barlow's*, 436 U.S. at 332).

Second, as the court of appeals acknowledged (Pet. App. 11-12), the inspection provision has a properly defined scope. In keeping with the goal of ensuring that hotels and motels maintain proper registries, statutory inspections are limited to examining the registry itself. By requiring that the registry be kept in the guest reception area or an adjacent office, the provision also limits where an officer can conduct the inspection to a single spot that is either open to the public or chosen by the hotel or motel. The negligible nature of this intrusion is significant. *See, e.g.*, *King*, 133 S. Ct. at 1969 ("The fact that the intrusion is negligible is of central relevance to determining whether a search is reasonable.").

For similar reasons, § 41.49(3) adequately limits the inspecting officer's discretion. There is only one item open to review (the guest registry) and one place

to conduct the review (either the lobby or the adjacent office). The officer's discretion is further limited by the requirement that the inspection "shall be conducted at a time and in a manner that minimizes any interference with the operation of the business." § 41.49(3). Although the statute leaves officers with some discretion to select where, when, and how often to conduct inspections, that fact is not determinative of the result so long as the statute, as a whole, places adequate limits upon the discretion of the inspecting officer. *Burger*, 482 U.S. at 711 n.21. Here, the combination of an exceedingly narrow authorized search and the requirement that any search not interfere unnecessarily with operation of the business provides such limits.[9] Indeed, the limitations on an officer's discretion in § 41.49(3) are greater than those in the inspection provisions upheld in *Burger* and *Biswell*, which granted inspectors broader access to both the "business records" and the facility of the business owner during working hours or "at reasonable times." *Burger*, 482 U.S at 694 n.1, 711; *Biswell*, 406 U.S. at 312 n.1.

The limited nature of the inspections contemplated in § 41.49(3) stands in marked contrast to the inspection provisions this Court found unreasonable

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[9] Confirming the facial validity of the ordinance in this case would not, of course, affect other constitutional limitations on government conduct. An as-applied challenge could be brought to test any allegation of harassment, discrimination, or other improper use of the law.

in *Barlow's* and in *See* v. *City of Seattle*, 387 U.S. 541 (1967). The court of appeals relied on those cases in holding § 41.49 facially unconstitutional, but neither involved a closely regulated business. Moreover, in both cases the right to inspect applied to a broad spectrum of businesses—all employers subject to the Occupational Safety and Health Act (*Barlow's*) or to fire inspection (*See*). *Barlow's*, 436 U.S. at 309, 314-315; *See*, 387 U.S. at 541-542. They also subjected a wide range of areas to search—virtually the entire employer premises. The Court was therefore reasonably concerned with the scope of an inspector's discretion as to whom to search, what to search, where to search, and when to search. *Barlow's*, 436 U.S. at 322-323; *See*, 387 U.S. at 545-546. In contrast, § 41.49(3) is strictly limited to one type of business, one type of record, and one place that is either accessible to the public or chosen by the business.

Under these circumstances, it is reasonable for Los Angeles to authorize limited warrantless inspections of guest registries to ensure compliance with the unchallenged requirement that hotel and motel operators keep accurate records of the comings and goings of their guests.

CONCLUSION

The judgment of the court of appeals should be reversed.

Respectfully submitted,

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AMICUS CURIAE BRIEF

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In The Supreme Court of the United States

CITY OF LOS ANGELES,

Petitioner,

v.

NARANJIBHAI PATEL, et al.,

Respondents.

On Writ Of Certiorari To The United States Court Of Appeals For The Ninth Circuit

BRIEF OF CALIFORNIA STATE SHERIFFS' ASSOCIATION, CALIFORNIA POLICE CHIEFS' ASSOCIATION, CALIFORNIA PEACE OFFICERS' ASSOCIATION, NATIONAL SHERIFFS' ASSOCIATION, MAJOR COUNTY SHERIFFS' ASSOCIATION, AND LOS ANGELES COUNTY POLICE CHIEFS' ASSOCIATION AS AMICI CURIAE IN SUPPORT OF PETITIONER

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AMICUS CURIAE BRIEF IN SUPPORT OF PETITIONER

Amici Curiae are the following associations:

California State Sheriffs' Association

California Police Chiefs' Association

California Peace Officers' Association

National Sheriffs' Association

Major County Sheriffs' Association

Los Angeles County Police Chiefs' Association

(collectively "*Amici Curiae*").[1] *Amici Curiae* respectfully submit the following brief in support of Petitioner, City of Los Angeles.

I. INTERESTS OF *AMICI CURIAE*.

Amici Curiae are the above Associations, whose members make up a vast array of law enforcement officers throughout the State of California and the United States. *Amici* Members represent policy making officials, management, and rank and file officers, providing a broad spectrum of law enforcement

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[1] No party or counsel for a party authored this brief, in whole or in part. No person or entity other than *Amici Curiae*, its members, or its counsel made any monetary contribution to the preparation or submission of this brief. This representation is made in compliance with Rule 37.6 of the United States Supreme Court Rules. The parties have consented to the filing of this brief.

viewpoints, both at the local, county and national levels.

A. California State Sheriffs' Association

The California State Sheriff's Association ("CSSA") is a non-profit professional organization that represents each of the 58 California Sheriffs. It was formed to allow the sharing of information and resources between sheriffs and departmental personnel, in order to allow for the general improvement of law enforcement throughout the State of California.

B. California Police Chiefs' Association

California Police Chiefs' Association ("CPCA") represents virtually all of the more than 400 municipal chiefs of police in California. CPCA seeks to promote and advance the science and art of police administration and crime prevention, by developing and disseminating professional administrative practices for use in the police profession. It also furthers police cooperation and the exchange of information and experience throughout California.

C. California Peace Officers' Association

The California Peace Officers' Association ("CPOA") represents more than 2,000 peace officers, of all ranks, throughout the State of California. CPOA provides professional development and training for peace

officers, and reviews and comments on legislation and other matters impacting law enforcement.

D. National Sheriffs' Association

The National Sheriffs' Association is a 26 U.S.C. Section 501(c)(4) non-profit formed in 1940, which promotes the fair and efficient administration of criminal justice throughout the United States; and, in particular, in advancing and protecting the Office of Sheriffs throughout the United States. The Association has over 21,000 members and is the advocate for over 3,000 individual Sheriff Offices/Departments located throughout the United States. For 75 years, the National Sheriffs' Association has continuously promoted the public interest goals and policies of our nation's local law enforcement communities; and the National Sheriffs' Association continues to participate in judicial processes where the vital interests of law enforcement and its members are being affected.

E. Major County Sheriffs' Association

The Major County Sheriffs' Association ("MCSA") is a professional law enforcement association of elected sheriffs representing counties or parishes with 500,000 or more in population. MCSA is dedicated to preserving the highest integrity in law enforcement and the elected Office of the Sheriff. In particular, MCSA works to promote a greater understanding of law enforcement strategies to address future problems and identify law enforcement challenges facing its members. MCSA also advances legislative and

legal issues that will enhance the safety of its members' communities. MCSA also supports the development of innovative education along with prevention and enforcement strategies and programs. Further, MCSA facilitates the sharing of ideas, concepts and resources for the benefit of law enforcement.

F. Los Angeles County Police Chiefs' Association

Los Angeles County Police Chiefs' Association ("LACPCA") is a non-profit mutual benefit corporation that represents the 45 municipal police chiefs of Los Angeles County, who are devoted to promoting public safety and inter-agency cooperation within the Los Angeles County region. LACPCA focuses on advancing the science and art of police administration and crime prevention in Los Angeles County; coordinating the implementation of law enforcement efforts by local law enforcement leaders; and developing, teaching, and disseminating professional law enforcement practices.

G. *Amici Curiae* Interests in This Matter

This case raises important issues for *Amici Curiae*. Municipalities and Counties represented by the members of *Amici* have hotel guest registry inspection ordinances similar to the one at issue in the City of Los Angeles, or may be able to make use of such regulations for the benefit of those jurisdictions that do not already utilize such regulations. The type of ordinance at issue in this matter serves as a vital

tool to local law enforcement in combating crimes. The invalidation of the ordinance in this case by the Ninth Circuit Court of Appeals prevents police and sheriffs' departments from accessing information for regulatory verification and for use as a vital law enforcement resource.

Since *Amici* represent the interests of a wide variety of law enforcement in California and throughout the nation, *Amici* provide this Court with a valuable perspective into the potential implications of the *en banc* opinion in this matter. Such perspective includes anecdotal information from its members about the actual use and enormous value of the regulation at issue. The underlying law enforcement issues relevant to the challenged City of Los Angeles regulation impact important public safety concerns that are critical locally, as well having widespread and national implications.

Given the significant ramifications of the Ninth Circuit's *en banc* opinion striking down the regulation of the City of Los Angeles, *Amici* respectfully submit this *Amici Curiae* brief in order to provide their perspective relating, in particular, to actual implementation of the type of regulation at issue.

II. SUMMARY OF THE ARGUMENT

Amici Curiae represent the interests of law enforcement with wide-ranging experience utilizing hotel and motel registry information. Such information is routinely used by *Amici* to impede human

trafficking and prostitution. Frequent and regular inspection of the registry information required to be maintained by the City of Los Angeles ordinance deters such crimes and permits the more immediate identification of and aid to victims of human trafficking and compelled prostitution. These are very serious public safety concerns justifying governmental intrusion into the records at issue. Indeed, the search of hotel and motel business records, in the limited way provided for in the ordinance of the City of Los Angeles, is both constitutionally reasonable under the circumstances and within the exception to the warrant requirement provided as to "closely regulated" businesses, such as hotels and motels. Finally, a facial challenge cannot be found where, as here, only some applications, at most, may be found unconstitutional.

III. ARGUMENT

A. Introduction.

Hotels and motels are the types of business that have the potential to become a haven of criminal activity that can detrimentally impact local jurisdictions. Most notably, these businesses can present a significant law enforcement and general public safety concern as to prostitution and human/sex trafficking, in particular. At issue before this Court is a City of Los Angeles municipal ordinance that permits City police officers to inspect registration records of hotels and motels, which are required to contain certain, minimal guest information and are required to be

maintained for the purpose of City inspection. Since the privacy interests of these businesses is extremely limited and law enforcement governmental concerns are of enormous magnitude, the City's warrantless, administrative search requirements are reasonable and constitutional. Indeed, hotels and motels are "closely regulated" businesses, for which limited administrative searches are permissible. The special concerns presented by compelled prostitution and human trafficking, especially involving minors, are of such magnitude that the limited searches permitted by the ordinance of the City of Los Angeles are constitutionally permissible. The hands of law enforcement must not be tied so that officers are thwarted in their legitimate efforts to rescue victims of human/sex trafficking from bondage.

B. Hotel and Motel Registration Information Is Used to Combat Human Trafficking and Prostitution, Which Are Crimes That Are Especially Hard to Detect and Which Implicate Significant Public Health and Safety Concerns.

The practical impact of the Ninth Circuit's *en banc* opinion in this matter cannot be gainsaid. There are two key crimes which can be regularly furthered or harbored by hotels and motels – human trafficking and prostitution, the latter of which is often compelled prostitution. These are frequently transitory crimes, for which time is of the essence in locating

victims, particularly minor females, who oftentimes are participating in these activities against their will.

In addition, the Ninth Circuit's *en banc* opinion undermines the deterrent benefit of the City's ordinance. Because customers of hotels and motels are aware that their name and basic identifying information, including vehicle information, is being collected at registration, and they know that such information is being shared with law enforcement, customers are discouraged from using these locations for these types of crimes, as well as other crimes.

The value of *Amici* is that they can provide this Court with a practical perspective as to the importance and implementation of the ordinance provisions at issue in this matter. The ordinance of the City of Los Angeles is not limited to this City alone, but is similar to local ordinances throughout the State of California and other jurisdictions. The impact of the Court's opinion in this matter is more widespread than simply in the City of Los Angeles.

More importantly, as the California Attorney General has recognized, "California is one of the nations' top four destination states for trafficking human beings," so this is a matter of widespread and critical significance. OFFICE OF THE ATTORNEY GENERAL, CAL. DEP'T OF JUSTICE, "The State of Human Trafficking in California 2012," at 3. Human trafficking, including sex trafficking, is "a rapidly growing and evolving criminal enterprise, [that] presents unique challenges for law enforcement." *Id.* at 71. The State

of "California has nine regional anti-human trafficking task forces." *Id.* at 29.

The Attorney General's Office recognizes that particular businesses can facilitate human trafficking including, specifically, hotels and motels. The Attorney General reports that "[i]n 2001, a major sex trafficking ring was shut down in San Diego," which included "[c]harges against the owners of a motel in Oceanside who, according to the indictment, set aside rooms apart from the rest of their legitimate customers where girls and women were housed, charged the gang members/pimps a higher rate for the rooms and warned the gang members of inquiries by law enforcement." *Id.* at 25. Although this may present an extreme example of active participation by a motel in prostitution and human trafficking crimes, the problems presented by the transient and often anonymous nature of hotel and motel customers underscore the significant law enforcement interest at issue.

This is especially critical because the Federal Bureau of Investigation rates the San Francisco, Los Angeles, and San Diego metropolitan areas in California as areas of "high intensity child prostitution" within the United States. CALIFORNIA CHILD WELFARE COUNCIL, Walker, Kate, "Ending the Commercial Sexual Exploitation of Children: A Call for Multi-System Collaboration in California," at iii. Exploited children involved in human trafficking are "often moved from city to city" and the crime is often concealed, with "exploiters us[ing] motels," for instance, as locations for the exploitation. *Id.* at 24-25.

A 2013 report by the Polaris Project concluded that "[p]imp-controlled sex trafficking was the most commonly referenced form of sex trafficking, occurring in places like hotels and motels, streets, and truck stops, and was often facilitated online," based on data from the National Human Trafficking Resource Center. NATIONAL HUMAN TRAFFICKING RESOURCE CENTER, "Human Trafficking Trends in the United States 2007-2012," at 6. In fact, the Project identified California as the highest state for potential trafficking cases reported to the Resource Center. *Id.* at 9 & Appendix 2.

The Office of Community Oriented Policing Services ("COPS") of the Department of Justice has recognized in training materials that "budget" motels provide a haven for criminal activity generally, but especially those crimes that prey on victims and flourish with anonymity. OFFICE OF COMMUNITY ORIENTED POLICING SERVICES, U.S. DEP'T OF JUSTICE, PROBLEM-ORIENTED GUIDES FOR POLICE, PROBLEM-SPECIFIC GUIDES SERIES NO. 30, Schmerler, Karin, "Disorder at Budget Motels." COPS recognized that "[m]otels and hotels house people only temporarily, often in commercial areas with high crime rates." *Id.* at 2. It is this very essence of the hotel and motel industry that requires regulation for critical public safety. Specifically, as COPS recognized, motels, often with drive up access to guests, "allow[ ] problem guests and visitors to come and go without being seen by motel personnel" and "allow unrestricted and

anonymous access to guest quarters at any hour of day or night." *Id.* at 5-6.

COPS specifically recommends to motels that photo identification be obtained for all adult guests and visitors, which "reduces the perception of anonymity at motels, reinforces personal accountability for behavior, and provides police with important information should a crime occur. " *Id.* at 21. Specifically, motel "[s]taff should record all guest and visitor information on a government-approved registration form readily accessible to police. " *Id.* at 22.

Some members of *Amici* are also part of the Orange County Human Trafficking Task Force, which specifically recognizes the value of obtaining room registration information from hotels and motels as a key tool in deterring, preventing and regulating the use of these facilities in ways that are a significant risk to the public health and welfare.

In particular, this task force has had experience with motel room registration information leading directly to the rescue of human trafficking victims. For instance, in the course of a direct investigation of prostitution occurring at a motel, officers gained information from the motel that the room was being rented for the prostitute by a male pimp, and identification of that individual, by name and vehicle, led to the discovery of another prostitute who was a victim of human trafficking. The task force would not have been able to locate the latter victim without the information about the pimp, obtained from the motel

registration. And, since human trafficking victims are often moved from one place to another in order to avoid detection, the transitory nature of this crime makes time of the essence in obtaining such information and locating the perpetrators and victims.

In fact, the task force has found that its human trafficking cases lead to motels a majority of the time. In human trafficking, it is not merely a matter of a hotel or motel room being used for prostitution activity, but the task force also finds that a motel room is often the place of confinement. Human trafficking victims are not permitted to leave a hotel or motel room and are often kept in an unfamiliar location or are coerced by threats of violence to themselves or their family. The fact that a room is not locked does not obviate the fact that it is a place from which victims cannot escape. Room registration information is often essential to human trafficking investigations because these are the places where the majority of the victimization takes place and this information leads to officers' ability to locate victims before they are moved to another location.

Members of *Amici* further report that they often do not have to resort to enforcement of local regulations permitting law enforcement access to hotel and motel registration information. Indeed, such information is widely provided voluntarily by these business establishments, such as in Santa Monica, Riverside, and Signal Hill. These experiences support the claim by the City of Los Angeles that hotels and motels do not widely regard registration information as private

business records. To the contrary, these records are often freely shared with law enforcement.

Other members of *Amici* also report that hotel and motel registration information is used in other ways that deter or disrupt human trafficking, and which allows officers to quickly identify victims and end victimization. In particular, such information is regularly used to quickly corroborate victim and witness statements. For instance, a human trafficking victim who is occupying a rented hotel or motel room may report that he or she stayed in the room with the suspect, that the room was rented by the suspect for the victim's use, or that the victim rented the room but used the suspect's identifying information (such as the suspect's address, phone number or vehicle information).

The registration information can immediately aid officers in verifying the status of a witness or participant in illegal activity as a victim, allowing officers to get the victim swiftly out of the situation, as well as putting the victim in touch with necessary support services. Such information can also aid in identifying or locating the suspect and additional victims, before they can be quickly secreted away without detection.

The immediacy of access to registration information can be critical in these circumstances. The registration information can also be pivotal because victims and witnesses may not know a suspect by a full name, but only by a nickname or moniker. In addition, other victims can be expeditiously identified

and located with registration information that is more detailed than the minimal information often known by victims and witnesses.

More importantly, the above circumstances may be avoided altogether by ordinances like that in the City of Los Angeles. When registration information requires government-issued identification or even just documents customers' full names and vehicle information, this requirement deters criminals from using these areas for these types of crimes. Since the individuals perpetrating human trafficking and compelled prostitution crimes are frequently known to their victims or to witnesses by nicknames, and they want their names and crimes to remain anonymous, they are deterred from using hotels and motels for their crimes because of the very fact that their identities are required to be disclosed to hotel and motel operators. The deterrent effect is particularly successful because these perpetrators also know that the information they are required to provide as a customer is subject to regular and periodic inspections by law enforcement. Ordinances like that of the City of Los Angeles directly impact the use of hotels and motels for these very serious crimes.

Regular inspection of hotel and motel registrations is also paramount. It provides information about how well the business itself is run – whether the business establishment may be facilitating, either intentionally or unknowingly, victimization. Most importantly, when registration information can be regularly inspected, deficiencies in information can be

pointed out to hotel and motel operators. This maintains the integrity not only of the information kept, but also encourages operators themselves to understand the importance of the information and to engage in a partnership with law enforcement for the betterment of the community as a whole, including the operator's business interests.

There is an immeasurable deterrent effect in the keeping of such information by hotels and motels, due to the widely known fact that such information is kept and regularly reviewed by law enforcement. Recording of the registry information helps reduce and deter prostitution and other crimes at hotels and motels generally. This is an enormous public benefit that must be recognized in balancing the limited, commercial privacy interest at stake here.

Members of *Amici* recognize, from decades of law enforcement experience, that hotels and motels can attract certain illegal activity. These illegal activities often consist of prostitution, including compelled prostitution associated with human trafficking, for which the registration information is useful in combatting, as discussed above. However, such illegal activity can also include identify theft, fraud, forgery, and narcotics sales and manufacturing. Because of the generally and undeniably transient nature of hotel and motel occupancy by all users, such crimes can regularly occur without much success in detection. Registration information serves as a deterrent to all of these crimes.

Both hotel and motel operators, and customers, are aware that such records are kept and can be subject to review by law enforcement. These records serve to end the anonymity otherwise associated with hotel and motel occupancy, and that can allow customers to regularly use these locations with impunity for illegal activity. This deterrent effect is also worthy of value in the balancing that this Court must do of governmental versus privacy interests.

The deterrent effect of the City's ordinance has been found to actually exist in Los Angeles in the wake of its regulation having been found invalid. The City's Police Department reports to *Amici* that, after it ceased enforcement of the ordinance in response to the *en banc* opinion, there has been an overall decrease by more than 40% of all human trafficking-related arrests.[2] Notably, only the Police Department's Vice and Human Trafficking units utilize the ordinance. Specifically, there was a decrease of over 50% in the rescue of minors from human trafficking in the

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[2] These arrests include contacts with victims that start off as an "arrest," but are later characterized as the rescue of a minor from human trafficking. They also include arrests for the suspects who are transporting the victims of human trafficking, as well as perpetrators of the "traditional" crimes of pimping, pandering, and prostitution. However, even some of these "traditional" arrests can involve human trafficking or other compelled prostitution, because a person engaging in these "traditional" crimes may be a victim of human trafficking or compelled prostitution but may be unwilling to accept social services assistance to escape from the individuals who are supervising or controlling their prostitution activities.

six-month period after the Ninth Circuit invalidated the City's ordinance.

Therefore, the inability of the City to have access to the inspection provisions of its ordinance as to hotel and motel registration information has had a direct negative impact in the fight against human trafficking, in particular. Without the City's ordinance, officers lose an essential tool in preventing the use of hotels and motels within the City for these particularly despicable crimes that have devastating effects on the lives of individuals, particularly females and minors.

C. The Fourth Amendment Permits the Reasonable Searches Provided for in the Hotel/Motel Registration Information Ordinance of the City of Los Angeles.

Generally, the Fourth Amendment "prohibits only *unreasonable* searches." *Bell v. Wolfish*, 441 U.S. 520, 558-59 (1979) (emphasis added) (citing *Carroll v. United States*, 267 U.S. 132, 147 (1925)). Specifically, this Court in *Bell* explained:

> The test of reasonableness under the Fourth Amendment is not capable of precise definition or mechanical application. In each case it requires a *balancing* of the need for the *particular* search against the invasion of *personal* rights that the search entails. Courts must consider the *scope* of the particular intrusion, the *manner* in which it is conducted,

> the *justification* for initiating it, and the *place* in which it is conducted.

Bell, at 558-59 (italics added) (citing *United States v. Ramsey*, 431 U.S. 606 (1977); *United States v. Martinez-Fuerte*, 428 U.S. 543 (1976); *United States v. Brignoni-Ponce*, 422 U.S. 873 (1975); *Terry v. Ohio*, 392 U.S. 1 (1968); *Katz v. United States*, 389 U.S. 347 (1967); *Schmerber v. California*, 384 U.S. 757 (1966)).

However, the Fourth Amendment does not protect "[w]hat a person knowingly exposes to the public." *Katz v. United States*, 389 U.S. 347, 351 (1967). For instance, this Court has "held that a 'mere handwriting exemplar like the voice or body itself, is an identifying physical characteristic outside its [Fourth Amendment] protection.'" *United States v. Dionisio*, 410 U.S. 1, 6-7 (1973) (quoting *Gilbert v. California*, 388 U.S. 263, 266-67 (1967)). Further, customers likely have no Fourth Amendment rights as to information voluntarily shared with businesses. *See, e.g., United States v. Willis*, 759 F.2d 1486, 1498 (11th Cir. 1985) ("courts have refused to find such an interest in records similar to the [hotel and motel] registration records here").

From the perspective of the customer of hotels and motels, there is no expectation of privacy in the identifying information provided under the City's ordinance. As the Ninth Circuit found in *United States v. Cormier*, 220 F.3d 1103, 1108 (9th Cir. 2000), hotel and motel registration records were found "not [to] contain highly personal information" about the

customer, but "merely stated his name and room number."

Notably, customers may provide at least some of the information required by the City's ordinance in the public registration area of a hotel or motel. *See, e.g., Patel v. City of Los Angeles*, 738 F.3d 1058, 1073 (9th Cir. 2013) (Clifton, J., dissenting) ("a guest registry may be a publicly accessible book in a publicly accessible hotel lobby"). In fact, information such as a customer name may even be provided *verbally* in these public areas. In addition, information such as vehicle license plate, make and model of a vehicle on the hotel or motel premises are all information readily visible to the public.

Nonetheless, the hotel and motel operators challenging the City of Los Angeles ordinance at issue here assert that they have a Fourth Amendment right to privacy to those check-in business records. But, as the dissent to the *en banc* opinion points out, *Cormier* demonstrates that hotels and motels may readily consent to the search of such records. As discussed above, the common experience of members of *Amici* is that hotels and motels do regularly and voluntarily provide registration information to law enforcement, for their own benefit.

As such, the dissent recognizes that "if there are hotels that do not view guest registry information as private to themselves, the inspection permitted by the ordinance may not be unreasonable." *Id.* In fact,

even the City's ordinance contemplates that the information required to be maintained, and what may be inspected by law enforcement, may be "a guest registry [that] may be a publicly accessible book in a publicly accessible hotel lobby." *Id.* The ordinance itself mandates that the registration information required to be maintained by hotels and motels must be kept "in the guest reception or guest check-in area or in an office adjacent to that area." *Id.* at 1062 (quoting Los Angeles Municipal Code § 41.49 (3)(1)). At least in some instances, there is no question that the requirements of the City's ordinance relate to information that is not protected by the Fourth Amendment because it is collected and kept in an open, public area of hotels and motels.

Fundamentally, this Court must *balance* the interests in the information sought, and the reasonable expectation of privacy in those particular records, with the governmental interest in such information. Under the City's ordinance, the balance, taking into account all of the circumstances, tips in favor of finding that the limited intrusion permitted by the ordinance is constitutional.

Notably, the ordinance requires that certain minimal, primarily general identifying information be obtained by hotel and motel operators of guests at check-in. Respondents do not seek to protect any privacy interest of their guests, and the District Court and Ninth Circuit Court of Appeals below recognized none. Therefore, the guests have no protectable

interest in the information maintained by hotels and motels under the City's ordinance. Instead, it is only the operators' interest in such information as a business record that is at issue in the matter before this Court, and the operators' privacy interests in such information is limited. *See, e.g.*, *New York v. Burger*, 482 U.S. 691, 700 (1987) ("An expectation of privacy in commercial premises, however, is different from, and indeed less than, a similar expectation in an individual's home.").

Further, as discussed in detail above, there are substantial governmental interests at issue in the information sought in hotel and motel registries. Critical matters of public health and safety, and the deterrence and prevention of crime, including the abuse of minors, are at stake. These significant interests tip the constitutional analysis in favor of upholding the City's regulation.

D. The Ordinance Concerns the Regulation of "Closely Regulated" Businesses, Which Provides an Exception to the Fourth Amendment's Requirement for a Warrant for Searches.

In addition to the above, there is an exception to the Fourth Amendment altogether for "closely regulated" businesses. This Court has recognized the ability of governmental entities to establish a regulatory scheme that permits limited, warrantless searches of closely regulated businesses under certain

circumstances. *See generally*, *New York v. Burger*, 487 U.S. 691 (1987). In *Burger*, this Court found that a junkyard was a closely regulated business for which the owner had a lower expectation of privacy. *Id.* at 703. Limited intrusion was permitted where there was a substantial governmental interest, surprise inspections were a necessary enforcement tool, and there was a constitutionally adequate substitute for a warrant. *Id.* at 702-03.

This Court has periodically recognized other businesses as "closely regulated" for purposes of applying the above exception to the warrant requirement. For instance, in *United States v. Biswell*, a pawnshop was recognized as "closely regulated," because the matters at issue were "of central importance to federal efforts to prevent violent crime and to assist the States in regulating the firearms traffic within their borders." *United States v. Biswell*, 406 U.S. 311, 316 (1972). This conclusion was reached, this Court found, even though "[f]ederal regulation of the interstate traffic in firearms is not as deeply rooted in history as is governmental control of the liquor industry." *Id.* at 315.

Indeed, as Petitioner City of Los Angeles details in its brief to this Court, the City actually has a long history of regulating in the precise manner permitted in the challenged ordinance. Brief for Petitioner ("Pet. Br.") at 4-7 (Los Angeles ordinance in effect in various forms since 1899). Further, inns and hotels also have a long history of being regulated. Pet. Br. Parts II.A.1. (historical regulation of hotels) and II.B.1. (same).

In fact, there are various other industries that may be recognized as "closely regulated" by local governmental entities. For instance, adult businesses are often heavily regulated by zoning ordinances in cities. Although their operations may not be regulated, zoning-related aspects of such businesses are uniformly regulated in order to ameliorate negative secondary effects regularly associated with such businesses. In *Andy's Rest. & Lounge v. City of Gary*, 466 F.3d 550, 557 (7th Cir. 2006), the Court of Appeals found, in dicta, that an adult business was a closely regulated one because

> any concerns about privacy violations are abated by the language of the statute that limits inspection to assuring compliance with the specific requirements of the Ordinance – that is the open booth requirement, the hours of operation restrictions, the prohibition of physical contact, and other requirements as specifically listed in the Ordinance. In other words, as counsel assured the panel at oral argument, officers or agents of the City cannot enter non-public areas of the premises, or do anything other than check for compliance with the requirements of the Ordinance.

Id.

Similarly, the district court in *Alexis, Inc. v. Pinellas County*, 194 F. Supp. 2d 1336, 1350-51 (M.D. Fla. 2002), found that adult businesses were closely regulated, due, at least in part, to the fact that there

was "substantial governmental interest in preserving the morals and safety of the community or [regulation of these businesses] is necessary to combat the perceived secondary effects of such businesses."

Local agencies thus must be able to determine businesses that must be closely regulated. Even if such regulation is not particularly extensive as to the businesses operations, there are certain businesses which have negative secondary effects in terms of potential nuisance impact, or that implicate very serious threats to local communities by the potential harboring of criminal activities which are particularly detestable – such as human and sex trafficking in relation to the hotel and motel industry. Protection against the impacts associated with such businesses, by local regulation, is not only laudable but a moral imperative.

There is a balance that must be struck between the requirement for a regulated industry and an important governmental interest under the "closely regulated" businesses exception to the Fourth Amendment warrant requirement. This standard is subject to a sliding scale that can afford very significant governmental interests more weight in the balancing when there are more minimal regulations of an industry. Where, as here, there is a very low expectation of privacy in merely commercial records, which are minimally intruded upon and for which there is no privacy interest in the information actually being inspected, then a lower showing is required

to demonstrate a permissible inspection scheme for a closely regulated industry.

In fact, local governmental agencies can be afforded some degree of latitude to utilize local regulations in combatting age-old problems, especially when these may manifest in ever-changing methods for coercion and criminal enterprise. Some flexibility should be afforded to local agencies in controlling "closely regulated" businesses, particularly where such businesses may permit or, even unwittingly, facilitate particularly contemptible crimes that take advantage of the most vulnerable in society.

The *Biswell* Court recognized that the governmental interest underlying a regulation and its administrative search component are critical: "Large interests are at stake, and inspection is a crucial part of the regulatory scheme, since it assures that weapons are distributed through regular channels and in a traceable manner and makes possible the prevention of sales to undesirable customers and the detection of the origin of particular firearms." *United States v. Biswell*, 406 U.S. 311, 315-16 (1972).

Similar significant interests are of concern here as well, in that hotel and motel registration information is used primarily to combat the significant health and safety concerns associated with human/sex trafficking and prostitution, both of which frequently involve minors. To put it plainly, the direct victims of such crimes, in many cases children, are rescued from dire circumstances due to the regular

maintenance and inspection of hotel and motel registration information.

The interests at stake are, if anything, superior to those interests protected in *Biswell,* since they are directly related to the preservation of personal dignity and saving of young lives. The widespread victimization at issue here presents a significant societal problem which justifies the limited administrative searches provided for in the City's ordinance.

Combatting sex trafficking has been recognized as a significant governmental interest. For instance, in *United States v. Chang Da Liu*, 538 F.3d 1078, 1084 (9th Cir. 2008), the Court held that, in "balanc[ing] the federal interests served by the legislation [criminalizing sex trafficking] against the degree of intrusion into local affairs the balance tips in favor of applicability [of Congressional authority] because [of] the federal government's significant interest in combating international sex trafficking. "

These significant interests and the transient nature of the crimes, discussed above, satisfy the first and second requirements under *Burger*. Finally, a constitutionally adequate substitute for a warrant requirement is provided. The City's ordinance permits review of *only* the registration record information required, and permits such inspections where the records are required to be maintained, primarily public areas – "in the guest reception or guest check-in area or in an office adjacent to that area." *Patel*, 738 F.3d at 1061 (quoting Los Angeles Municipal Code § 41.49 (3)(a)).

As the dissent recognizes, "[t]he ordinance narrowly cabins officer discretion by permitting only inspections of the specified guest registry information." *Id.* at 1073-74. The limited nature of the City's regulation is in direct contrast with the regulation found unconstitutional in *Tucson Women's Clinic v. Eden*, 379 F.3d 531 (9th Cir. 2004), which permitted the unlimited search of a medical clinic, including personal medical records, for which there was unquestionably Fourth Amendment protection.

Finally, the *en banc* opinion concludes that the City's ordinance is unconstitutional primarily because "it authorizes inspections of those records without affording an opportunity to 'obtain judicial review of the reasonableness of the demand prior to suffering penalties for refusing to comply.'" *Patel*, at 1065 (quoting *See v. Seattle*, 387 U.S. 541, 545 (1967)). However, what was at issue in *See* was the administrative search of the whole of a corporate or commercial premises or corporate books and records in their entirety.

The scope of a permissible search under the ordinance at issue here is distinctly different, in that the City of Los Angeles's ordinance allows only a very narrow inspection of hotel and motel registration records. These records contain information that is voluntarily provided by registered guests, who themselves have no expectation of privacy in that information. Further, the inspections can occur in entirely public areas, as referenced above.

The district court in *Free Speech Coalition v. Holder*, 957 F. Supp. 2d 564 (E.D. Penn. 2013), determined that a regulatory requirement for movie producers to maintain identifying information about pornography participants, which could be searched by law enforcement without a warrant, was valid under the Fourth Amendment. At issue were regulatory requirements that imposed "recordkeeping, labeling, and inspection requirements on producers of sexually explicit media," in order to combat child pornography. *Id.* at 568. The court determined that the business was "closely regulated," based on the fact that producers were subject to such recordkeeping requirements as to participants, which regulations had as their aim the protection of the safety and welfare of children. *Id.* at 605.

The district court specifically concluded that "[t]he governmental interest informing the regulatory scheme – combatting child pornography – is substantial. Meanwhile, the Statutes and regulations provide 'a constitutionally adequate substitute for a warrant' because they notify producers that inspections can occur on a regular basis. " *Id.* at 605-06. Similar to the ordinance at issue here, the regulations at issue in *Free Speech* "circumscribe[d] the time, place and scope of the inspections," "refer[red] to the 'limited nature of the records inspection,'" and "provid[ed] that the inspections should be 'conducted so as not to unreasonably disrupt the operations of the establishment.'" *Id.*

The *Free Speech* Court noted that such a regulatory scheme was also valid if it was "'necessary to further [the] regulatory scheme,'" and that unannounced inspections could be justified when they "serve[d] as a credible deterrent." *Id.* (quoting *New York v. Burger*, 482 U.S. 691, 702 (1987) (change in original); *Biswell*, 406 U.S. 311, 316 (1972)). The court did find a portion of the regulation at issue in *Free Speech* to be impermissible, but that was to the extent the unannounced inspections permitted searches of producers' records at their *residences*. In that regard, *Free Speech* implicated privacy concerns that are not at issue in this matter.

However, a critical final point of the *Free Speech* court's conclusion was the court's finding that, even despite constitutional deficiencies found in one potential application of the regulation, *i.e.*, searches of producers' residences, such potential unconstitutional application is not a fatal flaw for purposes of a *facial* challenge. Similarly here, and as discussed below, potential unconstitutional applications of the ordinance of the City of Los Angeles do not constitute a successful *facial* challenge.

E. This Facial Challenge to the City's Ordinance Cannot Be Upheld When There Are Potentially Both Valid and Invalid Applications.

One key problem presented by Respondents' facial challenge to the City's ordinance is the very first point noted by the dissent, which recognizes that

"the validity of a warrantless search should generally be decided in the concrete factual context of an *as-applied* challenge." *Patel*, 738 F.3d at 1070 (Clifton, J., dissenting) (emphasis added). In point of fact, the dissent emphasizes that "a facial challenge fails unless 'the law is unconstitutional in *all* of its applications.'" *Id.* (emphasis added) (quoting *Washington State Grange v. Washing State Repub. Party*, 552 U.S. 442, 449 (2008)).

Indeed, when the Third Circuit considered the administrative search provisions in regulations of pornographic media in *Free Speech Coalition v. Attorney Gen. of the U.S.*, 677 F.3d 519, 543 (3d Cir. 2012), before remanding to the district court on the Fourth Amendment issue, the court of appeals found that a "factual context is necessary for determining whether the government's conduct was a 'search' under the Fourth Amendment." Further, the court of appeals found that it could not determine "whether plaintiffs have an objective expectation of privacy in the searched areas and effects unless the contours of the alleged searches are more fully delineated," and that "further development of the record is necessary to determine whether the administrative search exception to the expectation-of-privacy test is applicable." *Id.* at 544. The court noted that "[f]actors to consider when determining whether a particular industry is closely regulated include: duration of the regulation's existence, pervasiveness of the regulatory scheme, and regularity of the regulation's application." *Id.*

In the context of this case, the Ninth Circuit's *en banc* opinion cannot stand, in that it ignores the long-held requirement that facial invalidity can be found only if there is *no* constitutional application of the challenged ordinance at all. As the dissent recognizes, there are potential applications of the City's code requirements which would be constitutional. Local legislatures must be permitted to fashion regulations, particularly when they are attempting to combat evasive evils that test law enforcement tools, unless such regulations are so plainly and *completely* unconstitutional in *every* instance. Such a rule properly recognizes the separation of powers between the judiciary and local legislative and executive authority.

IV. CONCLUSION

There can be no greater governmental interest than those for which the City's ordinance is used. Hotels and motels, by their fundamental nature, provide transient accommodations. These transient accommodations are capitalized on by criminals for the exploitation of others, especially women and minors.

Under these circumstances, the limited inspection of business registration records required to be kept by ordinance of the City of Los Angeles is not unreasonable under Fourth Amendment jurisprudence, particularly where hotels and motels satisfy the *Burger* requirements for closely regulated businesses. The interests at stake are simply too significant to be predominated by the virtually non-existent

privacy interests of hotels and motels in the minimal identifying information of their customers. It is constitutionally permissible, and simply not too much to ask of hotel and motel operators, to permit the review of these records by law enforcement, where such review has a significant deterrent effect and, more importantly, is invaluable for locating and rescuing victims of prostitution and human trafficking.

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AMICUS CURIAE BRIEF

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SUPREME COURT OF THE UNITED STATES

CITY OF LOS ANGELES, CALIFORNIA,

Petitioner,

v.

NARANJIBHAI PATEL, ET AL.,

Respondents.

On Writ of Certiorari to the United States Court of Appeals for the Ninth Circuit

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BRIEF FOR THE CATO INSTITUTE AS *AMICUS CURIAE* IN SUPPORT OF RESPONDENTS

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QUESTION PRESENTED

Whether the right of Los Angeles hoteliers "to be secure in their persons, houses, papers, and effects, against unreasonable searches and seizures" is infringed by a statute that requires them to make their business records available for search on their premises by "any officer of the Los Angeles Police Department," for any reason or no reason, and without a warrant.

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INTEREST OF *AMICUS CURIAE*[1]

The Cato Institute was established in 1977 as a nonpartisan public policy research foundation dedicated to advancing the principles of individual liberty, free markets, and limited government. Cato's Center for Constitutional Studies was established in 1989 to promote the principles of limited constitutional government that are the foundation of liberty. Toward those ends, Cato publishes books and studies, conducts conferences, produces the annual *Cato Supreme Court Review*, and files *amicus* briefs. The present case centrally concerns Cato because it represents an opportunity to improve Fourth Amendment doctrine and maintain that provision's protections in the modern era.

SUMMARY OF THE ARGUMENT

Contrary to popular belief, the Fourth Amendment protects not privacy but the right to be free from unreasonable searches and seizures. The "reasonable expectation of privacy" test has proven unworkable and is not up to the task of administering the Fourth Amendment. This Court should eschew it again in this case.

The warrantless search scheme established by Los Angeles's municipal code is comprised of many seizures, which culminate in the seizure and search of hotel papers. It is not a public welfare regulation causing hoteliers to abate harms, nuisances, and

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[1] Pursuant to Rule 37.3(a), *amicus* states that all parties filed blanket consents with the Court. In accordance with Rule 37.6, counsel affirms that no counsel for any party authored any part of this brief and that only *amicus* made a monetary contribution to its preparation or submission.

risks. Instead, it conscripts them into surveillance related to crimes to which they are mere bystanders.

The statute authorizes unreasonable—and thus unconstitutional—searches. It does not require a warrant or restrict itself to constitutional circumstances like exigency, and it places no procedural limits on government agents' searches of hotel records.

The "administrative search" doctrine, which permits searches of parties at whom the relevant regulatory scheme is directed, has no application to this context. Some hotels may have proximity to crimes—much like some people live in neighborhoods with higher crime rates—but it is nothing like the proclivity to crime in industries such as auto dismantling.

In sum, the city simply has no justification for granting itself a general license to seize and search certain hotel records.

ARGUMENT

I. THIS COURT SHOULD NOT FOCUS ON "PRIVACY" BUT SHOULD APPLY THE FOURTH AMENDMENT ON ITS OWN TERMS

The "reasonable expectation of privacy" test is a poor tool for administering that Fourth Amendment. Since at least the ruling in *Kyllo v. United States*, 533 U.S. 27 (2001), this Court has reduced its reliance on that test for determining when searches have occurred. This Court should again eschew the use of select phraseology from one concurrence in *Katz v. United States*, 389 U.S. 347 (1967), focusing instead on applying the Fourth Amendment on its

own terms. When a search or seizure occurs, its effect on privacy is one consideration in determining whether or not it was reasonable. Privacy invasion is not, however, the *sine qua non* of unreasonable searches and seizures.

Instead of asking whether Los Angeles hoteliers have an "expectation of privacy" in their business records, this Court should examine whether their right "to be secure in their persons, houses, papers, and effects, against unreasonable searches and seizures" is infringed by a statute that requires them to create business records and make them available for search on their premises by "any officer of the Los Angeles Police Department," for any reason or no reason, and without a warrant.

A. The "Reasonable Expectation of Privacy" Test Is a Poor Tool for Administering the Fourth Amendment

Katz is often treated as the lodestar of modern Fourth Amendment jurisprudence. Unfortunately, select phraseology has overtaken the rationale of that case, dominating both case law and the academic literature. By eschewing the "reasonable expectation" language that Justice Harlan used in his *Katz* concurrence, this Court can clear up the doctrinal mess created by subsequent courts' use of this test to the exclusion of more textually based analysis.

Indeed, the *Katz* majority did not rely on Justice Harlan's "reasonable expectation of privacy" language. Instead, the Court rested its decision on the physical and legal protections Charles Katz had used to secure the privacy of his telephone conversation. "What a person knowingly exposes to

the public, even in his own home or office, is not a subject of Fourth Amendment protection," the Court wrote. *Katz*, 389 U.S. at 351. "But what he seeks to preserve as private, even in an area accessible to the public, may be constitutionally protected." *Id.* In the paragraphs that followed, the Court discussed the facts establishing that Katz's phone conversations were indeed private: Katz was in a phone booth made of glass that concealed the sound of his voice. *Id.* at 352. Against the argument that Katz's body was in public for all to see, which would strip information he produced there of Fourth Amendment protection, the Court wrote: "what he sought to exclude when he entered the booth was not the intruding eye—it was the uninvited ear." *Id.* The government's use of a bug to overcome the protections Katz had placed around his communication was unreasonable in the absence of a valid warrant. It was thus unconstitutional.

The "reasonable expectation of privacy" language in Justice Harlan's concurrence was an attractive addendum, but standing alone it is weak as a rule for deciding cases. As applied, that test reverses the inquiry required by the Fourth Amendment and biases Fourth Amendment doctrine against privacy.

Having a "reasonable expectation of privacy" arises from giving physical and legal protection to information, but this Court should no longer reason backward from privacy "expectations" to Fourth Amendment protection. It should not fixate on privacy, but follow the reasoning required by the Fourth Amendment itself, inquiring into the existence of searches and seizures affecting constitutionally protected interests and whether those searches and seizures are reasonable.

In other words, this Court should not ask whether individuals' expectations of privacy are reasonable. It should investigate whether government agents' seizures and searches are reasonable.

B. This Court Has Reduced Its Reliance on the "Reasonable Expectation of Privacy" Test

Kyllo may mark the beginning of a line of cases in which this Court is finding a better route to Fourth Amendment adjudication. The Court could have found in *Kyllo* that the government violated a "reasonable expectation of privacy" when its agents used a thermal imager to gather external temperatures from a home and draw inferences about what goes on within. Instead, it followed the inquiry dictated by the Fourth Amendment, asking (1) whether there was a search and, if so, (2) whether that search was reasonable. The Court analyzed the two issues distinctly, finding (1) a search that (2) was unreasonable: "Where, as here, the Government uses a device that is not in general public use, to explore details of the home that would previously have been unknowable without physical intrusion, the surveillance is a 'search' and is presumptively unreasonable without a warrant." 533 U.S. at 40.

In *United States v. Jones*, 132 S. Ct. 945 (2012), this Court could have found that monitoring a vehicle's movements for four weeks is a search because it offends "reasonable expectations of privacy." Indeed, on that ground, the concurrence agreed with the majority opinion's ruling. *Id.* at 964 (Alito, J., concurring in the judgment). But the majority opinion was stronger for rooting its finding of a "search" in the small property seizure involved

when government agents converted a privately owned vehicle to the government's information-gathering purposes: "We hold that the Government's installation of a GPS device on a target's vehicle, and its use of that device to monitor the vehicle's movements, constitutes a 'search.'" *Id.* at 945 (majority op.) (footnote omitted).[2] Beyond recognized exceptions to the rule, a search is presumptively invalid without a warrant.

In *Florida v. Jardines*, 133 S. Ct. 1409 (2013), this Court could have found that bringing a drug-sniffing dog to the door of a home violates "reasonable expectations of privacy." Instead, it held that the customary license to enter private property does not extend to government agents "introducing a trained police dog to explore the area around the home in hopes of discovering incriminating evidence." *Id.* at 1416. Entering onto private property adjacent to the home without license from the property owner is a use of the land—a seizure—that is unreasonable without a warrant.

Privacy is a relevant consideration when a seizure or search has been identified and the Court examines its reasonableness. So the Court last term in *Riley v. California*, 134 S. Ct. 2473 (2014), assessed searching of cell phones incident to arrest. One of the factors in whether the searches of the cell phones were reasonable was their effect on the privacy of arrestees. *Id* at 2488. As they enjoy the presumption of innocence, and because their phones contain a vast

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[2] The Court's footnote here goes into the ownership status of the car, signaling the importance of the property invasion—the seizure—that facilitated the four-week search for Jones's car's location.

trove of personal information about them and others, the Court pithily summarized its rule about searches of suspects' phones: "get a warrant." *Id.* at 2495.

These cases are salutary because they adhere more closely to the line of inquiry suggested by the Fourth Amendment: Was there a seizure or search? Was it of persons, houses, papers, or effects? Was it reasonable?

In this case, all parties agree—and lower court rulings rely—on the premise that the statute produces a Fourth Amendment search of hoteliers' papers. There is no call for use of the test from Justice Harlan's concurrence in *Katz*, and this Court need not evaluate the "expectation of privacy" to look for a search. The privacy of hoteliers and their guests is a consideration in determining whether the warrantless search scheme is reasonable. That assessment should be made with a view to the entirety of the investigatory scheme.

II. THE WARRANTLESS SEARCH SCHEME IS A COLLECTION OF SEIZURES AND SEARCHES THAT IS BEYOND THE AMBIT OF PUBLIC WELFARE REGULATION

As in many Fourth Amendment cases, the warrantless search scheme at issue here is not a single search, but a series of seizures and searches. Articulating and distinctly examining them can improve this Court's consideration of the issues, while modeling for lower courts how to apply the Fourth Amendment in difficult cases.

The warrantless search scheme falls outside the traditional ambit of public welfare regulation, which requires the creators of public nuisances, harms, and

risks to abate them. Instead, it seizes the assets and efforts of innocent private parties, dragooning them into the government's law enforcement apparatus.

A. "Seizure" and "Search" Are Distinct Activities, Even if They Often Occur Together

This Court's cases have rarely defined "seizure" distinctly from "search." *United States v. Jacobsen*, 466 U.S. 109, 114 n.5 (1984) ("[T]he concept of a 'seizure' of property is not much discussed in our cases"). This is in part because incursions on property rights—seizures—are often the means government agents use to discover information: Seizure is the way they search.

Often, seizures and the searches they facilitate have the same legal justification—or they both lack one. *See, e.g.*, *Jones*, 132 S. Ct. at 949 ("The Government physically occupied private property for the purpose of obtaining information."). It is convenient to refer to small seizures and the searches they facilitate collectively as though they are a unitary "search." *See, e.g.*, *Arizona v. Hicks*, 480 U.S. 321, 324 (1987) (moving of stereo equipment to gather serial numbers "constitute[d] a 'search'"). Unfortunately, the convenience of lumping together seizures and searches has occasionally permitted this Court to ignore small seizures. *See, e.g.*, *New York v. Class*, 475 U.S. 106, 114 (1986) (police officer lifting papers not considered a seizure).

Seizures and searches are not the same, and they do not always occur together. *See, e.g.*, *Kyllo*, 533 U.S. at 32 ("a 'search' despite the absence of trespass"); *Soldal v. Cook County*, 506 U.S. 56 (1992) (seizure of mobile home, not part of search).

Collapsing important distinctions between seizure and search can obscure the legal import of government agents' actions—particularly when information is involved. This is because the Fourth Amendment consequences of information seizures spring not so much from possession of information as from its *use*.

The warrantless search scheme in this case puts hoteliers to work for the government, gathering information for prospective investigations. The government's use of hoteliers' time and property culminates in the seizure of that information by government agents with no warrant or probable cause, so they can search it.

B. The Warrantless Search Scheme is a Series of Seizures that Facilitates Warrantless Search

To comply with L.A. Municipal Code §41.49, every hotelier must maintain a record of the name and address of every guest, as well as the make, type, and license number of each guest's vehicle. §41.49(2)(1)(i),(ii). Every hotelier receiving a guest that pays cash (and certain other guests) must collect identity information, §41.49(2)(1)(iii), gathering such information from government-issued documents and presumably turning away guests without government-issued ID. *See* §41.49(1) (definition of "identification document"). Hoteliers must also collect the precise time of guests' arrival, §41.49(2)(2), and scheduled departure, §41.49(2)(5).

Every hotelier must dedicate an area on specific parts of their premises for maintenance of this record, and they must keep this record in this area for at least 90 days from the date of the last entry.

§41.49(3)(a). Every hotelier must make the record resistant to tampering, and every hotelier must have employee training and security measures in place to protect the record and to facilitate government agents' access to the record. *See* §41.49(3)(b).

The municipal code details the construction and layout of such records kept in book form or card form. §41.49(3)(c). Any hotelier keeping the record in electronic form must have software that allows for printing of the record, §41.49(3)(c), and assumedly each must have a printer or digital device that allows the record to be copied for government agents. The Code bars hoteliers from assigning staff to guest reception if they have not been trained in maintenance of this record. §41.49(5).

The definition of "hotel" is broad, *see* §41.49(1), and it probably encompasses accommodations offered in private homes and apartments through "sharing economy" services such as AirBnB. These hoteliers must allow government agents into their homes to permit the statute's administration.

The records hoteliers have been required to create and keep in the specified form must be "made available to any officer of the Los Angeles Police Department for inspection." §41.49(3)(a).

While many of these mandates track what hoteliers are likely to do of their own accord, they differ in many respects from what hoteliers would do if left to their own devices. If Los Angeles hoteliers keep their records for only 60 days, utilize lesser-trained staff on the graveyard shift, accept patrons that lack government-issued ID, or maintain their records in a spiral-bound notebook rather than a

permanently bound book, they are liable to a penalty of six months in jail or a $1,000 fine.

The upshot of this regime is that Los Angeles hoteliers, including AirBnBers, must dedicate their time, money, and property to the government's ends as a condition of providing their services. The warrantless search scheme turns them and their property to the use of the government, depriving them of each unit of time, money, and property that they would otherwise use differently. All these mandates are seizures of hoteliers' property, culminating in searches of their mandated records.

These seizures, and the culminating searches, must all pass constitutional muster. They are not excused from constitutional standards as public welfare regulation.

C. The Warrantless Search Scheme Does Not Regulate Against Harms, Nuisances, and Risks, but Seizes and Searches Uninvolved Parties and Their Property in Furtherance of General Law Enforcement

There are plausible arguments that the giving over of records under Los Angeles's warrantless search scheme is not always a seizure because there are factual scenarios in which a hotelier may leave records open to the public or volunteer them to officers of the LAPD. These are weak arguments.

It is implausible in this day and age that hoteliers would leave customer information open for all to see. The defeat of the second argument is slightly more subtle: There is no volunteering of information when the statute's terms have taken away the hotelier's right to deny government agents access. One does

not "volunteer" an item to another by handing over what a statute already deems his to take.

A more serious argument is that the L.A. municipal code is an ordinary regulation of business activity not subject to analysis under the Fourth Amendment. It appears outwardly similar to regulation that requires hoteliers to change bed linens before a new guest occupies the bed, for example. *See* Cal. Civ. Code §1865. But there is an important difference between public welfare regulation and conscription of private entities into government service.

Whether they use it advisably or not, government entities have broad latitude to regulate in favor of the prosperity, well-being, or convenience of the public at large. Social interests within the ambit of regulatory authority include safety, order, economic interest, and aesthetics.

The entities regulated in pursuit of these public interests are almost universally those who threaten public welfare as defined by legislators and regulators. Safety regulation, for example, properly requires construction companies to erect barricades that physically protect the public, and to post signs that warn employees of dangers. In economic terms, these regulations cause construction firms to internalize the costs they might impose on others.

Consider an alternative regulatory regime that would require restaurants near construction sites to erect barricades and signs protecting passersby from assorted dangers. These restaurants may serve meals to construction workers and they may benefit indirectly from the increased customer base that a new building will sustain. But they are bystanders to

the construction project. Requiring them to look after safety on work sites does not cause them to internalize costs they impose on the public. Instead, this hypothetical regulation takes their property—in the form of time and money—for public use.

Loretto v. Teleprompter Manhattan CATV Corp., 458 U.S. 419 (1982), usefully illustrates a regulation on the wrong side of the "public welfare" line. Providers of housing are subject to many regulations that guard public welfare against ills and wrongs that might be done in the provision of housing. States have full power to require landlords "to comply with building codes and provide utility connections, mailboxes, smoke detectors, fire extinguishers, and the like in the common area of a building." *Loretto*, 458 U.S. at 440. Each of these things abates some nuisance or risk common in dwellings, or fleshes out the obligations society deems to inhere in the provision of housing.

However, a regulation obligating a landlord to turn over even a small portion of her real property to a third party falls afoul of the Fifth Amendment's restriction on takings. Such regulation may foster a more vibrant market for media and entertainment, but "a permanent physical occupation authorized by government is a taking without regard to the public interests that it may serve." *Id.* at 442.

Conscripting hoteliers into law enforcement is like giving landlords' property to cable companies. The public interest in abating crime may be strong, but that does not change the status of hoteliers from bystanders into responsible parties.

Amicus does not make the argument here that the municipal code section in dispute is a taking

under the Fifth Amendment.[3] Instead, *amicus* focuses on the statute's imposition of a "public welfare"-style obligation on a party that does not owe it. That makes the seizure of that party's property (time and labor) and the search of its papers unreasonable.

The Los Angeles ordinance conscripts hoteliers into surveillance related to crimes to which they are bystanders. Ultimately, in the step that respondents here contest, it provides for seizure of their papers—a specifically protected item under the Fourth Amendment—so that those papers can be searched by government agents, all without a warrant.

III. THE STATUTE ALLOWS UNREASONABLE AND THUS UNCONSTITUTIONAL SEARCHES

The L.A. municipal code does not require a warrant, does not restrict searches to constitutional circumstances, and places no limits on government agents' searches of the records it requires hoteliers to create and maintain. Nor does the warrantless search scheme give hoteliers any opportunity to challenge searches before they occur.

The "administrative search" doctrine is not properly applied to Los Angeles hoteliers.

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[3] That amendment's historical focus on real property is only beginning to mature into recognition that property in any form may be constitutionally taken. See *Brown* v. *Legal Found. of Wash.*, 538 U.S. 216, 235 (2003) (citing *Phillips* v. *Wash. Legal Found.*, 524 U.S. 156, 172 (1998)) (forced "transfer of the interest" in lawyers' trust accounts—*personal* property—under the "*per se* approach" is "akin to the occupation" of property "in *Loretto*"); *see also Horne v. U.S. Dep't of Agric.*, 2015 U.S. LEXIS 623 (U.S., Jan. 16, 2015) (No. 14-275) (cert. granted).

"Administrative search" is used in furtherance of regulation that abates nuisances, harms, and risks that the parties searched have a substantial role in creating. Provision of lodging does not have the predisposing relationship to crime that pursuits such as auto dismantling have, so hotels are inapt candidates for "administrative search."

The *California Bankers* case does not provide a precedent approving the warrantless search scheme. *Cal. Bankers Ass'n v. Schultz*, 416 U.S. 71 (1974). To the extent it suggests that private parties can be made to perform surveillance for the government of activities to which they are bystanders, it deserves reconsideration.

A. The Statute Does Not Require a Warrant, Does Not Restrict Itself to Constitutional Circumstances, and Places No Procedural Limits on Government Agents' Searching of Hotel Records

Absent a warrant, the search and seizure of a suspect's property is *"per se* unreasonable" unless justified by one of "a few specifically established and well-delineated exceptions." *Arizona v. Gant*, 556 U.S. 332, 338 (2009). The Los Angeles warrantless search scheme, which permits searches of non-suspects, makes no nod at all to this or other constitutional limits on authority to search suspects.

The requirement that hoteliers' papers must be "made available to any officer of the Los Angeles Police Department for inspection," §41.49(3)(a), contains no warrant requirement, of course. As treated in the briefs of the petitioners and the U.S. government, it envisions government agents appearing and making immediate demand to search.

That, according to this Court in *Gant*, is per se unreasonable absent an exception to the warrant requirement.

The statute does not restrict its applicability to any such exception. It does not limit searches to cases of exigency, for example. (And in cases of exigency, no statute is required.) Indeed, the warrantless search scheme does not even require government agents to have a suspicion that their search will reveal evidence of crime.

The statute at issue in *Sibron v. New York*, 392 U.S. 40 (1967), provides an instructive comparison. It permitted a police officer to stop a person "whom he reasonably suspects is committing a felony" or other offenses. *Id.* at 43. The statute in that case at least tracked the constitutional requirement that seizures be not unreasonable.

The statute here has no such limitation. Indeed, the warrantless search scheme goes the other way. The briefs of petitioners and the United States extol "frequent, unannounced inspections" of Los Angeles hotels, Pet. Brief at 39, and "surprise inspections" of them, U.S. Brief at 33. These invasions of innocent business owners' premises would not be to discover substantive crimes, but to ensure compliance with the record-keeping regime. It is a virtue of the system, in the government parties' view, that private business owners suspected of no crime should see government agents on their premises routinely, inspecting their business records to enforce paperwork requirements.

In one sense, the statute does cabin the search regime. It only provides for warrantless searching of the papers that it required hoteliers to maintain. But

constraining searches along this subject-matter dimension must be small consolation to a business owner, no suspect of crime, whose clientele may bring government agents behind them to make "frequent, unannounced inspections."

All this can occur because of an acute failing of the statute: its lack of procedural safeguards. As the *en banc* Ninth Circuit found: "[Section] 41.49 provides no opportunity for pre-compliance judicial review of an officer's demand to inspect a hotel's guest records. Hotel operators are thus subject to the 'unbridled' discretion of officers in the field, who are free to choose whom to inspect, when to inspect, and the frequency with which those inspections occur." *Patel v. City of Los Angeles*, 738 F.3d 1058, 1064 (9th Cir. 2013) (en banc).

Given its defects, this Court should find the warrantless search scheme a violation of the Fourth Amendment. Perfection should not be required of every statute affecting Fourth Amendment interests, but the warrantless search scheme seizes innocent parties, coercing them into law enforcement's information-gathering role, and authorizes searching of their papers that violates the Fourth Amendment in just about every way.

There is an argument that the statute may fit within the "administrative search doctrine," a gloss on the Fourth Amendment's reasonableness requirement that dispenses with warrants in a narrow band of cases. But "administrative search" ultimately does not save this scheme.

B. The "Administrative Search Doctrine" Is Not Properly Applied to Hoteliers in This Circumstance

The "administrative search doctrine" is a fascinating area of law. As articulated in *New York v. Burger*, 482 U.S. 691 (1987), this three-part test for escaping the Fourth Amendment's warrant requirement is a four-part test first requiring a "closely regulated" industry. If that exists, there must be a regulatory scheme that advances a "substantial" government interest, warrantless inspections that further the regulatory scheme, and "a constitutionally adequate substitute for a warrant." *Id.* at 702-03.

The cases always seem to turn on whether there is a "closely regulated" industry. As the doctrine would have it do, the petitioner's brief seeks to satisfy this most important prong of the test by listing examples that suggest hotels are pervasively regulated. Pet. Brief at 33.

The test, the application of it, or both are slightly comical, because the argument goes like this: Given the requirement that hotels must thoroughly wash multi-use ice buckets and put them in a sanitized bag, Pet. Brief at 34, hotels can be required to turn over business records on demand of any Los Angeles police officer. That is some syllogism.

The reason why this logic actually fails is that there is a premise to the "administrative search doctrine" that is rarely observed but essential to recognize: in administrative search cases, there is a close connection between the source of the problem that the regulation addresses and the entity subject to search. When that unity does not exist, as here,

applying the doctrine would not lead to a reasonable, constitutional result.

The *Burger* case dealt with administrative searches of automobile junkyards. Fittingly, the *Burger* Court noted the finding of New York regulators at the time of the inspection law's adoption that "[a]utomobile junkyards and vehicle dismantlers provide the major market for stolen vehicles and vehicle parts." 482 U.S. at 709. This is the essential reason why it may be reasonable to subject junkyards and dismantlers to warrantless administrative inspection. Possession of stolen cars and car parts is a risk that inheres in their very line of business.

Operation of hotels may have proximity to prostitution, drug dealing, and other crimes, but being in the hotel business does not produce a proclivity toward those illegal acts among hoteliers themselves. (This is true despite rare examples of hotel owners getting involved in crime.) The warrantless search scheme is not aimed at thwarting crimes on the part of hoteliers. It requires them to gather information that may be evidence to the crimes of others. This is no part of the "administrative search doctrine." It is unreasonable and unconstitutional.

C. The *California Bankers* Case Did Not Approve a Scheme Like the Warrantless Search Scheme Against Fourth Amendment Challenge

This Court's ruling in *California Bankers* does not dispose of the warrantless search scheme under the Fourth Amendment. That case dealt with many things: arguments proffered by various parties with

respect to various parts of the Bank Secrecy Act. Primarily, the case addressed the Due Process claims of banks against the record-keeping provisions of the Bank Secrecy Act's Title I. *Cal. Bankers Ass'n*, 416 U.S. at 45-51.

In its brief assessment of recordkeeping banks' Fourth Amendment claims, the Court found no issue because "[n]either the provisions of Title I nor the implementing regulations require that any information contained in the records be disclosed to the Government; both the legislative history and the regulations make specific reference to the fact that access to the records is to be controlled by existing legal process." *Id.* at 52. This is the exact opposite of what pertains in Los Angeles's warrantless search scheme, which allows government agents to search hoteliers' records on demand, without legal process, and subject to no judicial oversight or review.

In its Due Process analysis, the bulk of the precedents the majority cited were recordkeeping requirements with the primary purpose of regulating the record-keepers themselves. *Id.* at 46 (citing *Shapiro v. United States*, 335 U.S. 1 (1948), and *United States v. Darby*, 312 U.S. 100 (1941)). In one area, the Court found a consistent practice of record-keeping and reporting with the purpose of supporting law enforcement against others. That was in the area of taxation, where the (still growing) practice is for payers to file information returns that assist the government in monitoring payees. *Id.* at 47. The Court did not cite any case upholding the constitutionality of this practice against a Fourth Amendment challenge.

California Bankers was a 6-3 decision, with Justice Powell, joined by Justice Blackmun, sounding cautionary notes in a concurring opinion. *Id.* at 78-80. In his dissent, Justice Douglas decried the innovation in requiring private parties to gather information about each other for the government:

> Heretofore this nation has confined compulsory recordkeeping to that required to monitor either (1) the recordkeeper, or (2) his business. *Marchetti v. United States*, 390 U.S. 39, and *United States v. Darby*, 312 U.S. 100, are illustrative. Even then, as Mr. Justice Harlan writing for the Court said, they must be records that would "customarily" be kept, have a "public" rather than a private purpose, and arise out of an "'essentially noncriminal and regulatory area of inquiry.'" *Marchetti v. United States*, supra, at 57.

Id. at 86 (Douglas, J., dissenting)

Justice Marshall's dissent presciently objected to the Court's bifurcated treatment of mandatory recordkeeping and reporting to the government. There was no allegation that bank-collected records has been turned over to the government, so the Court declared individuals' claims against the scheme unripe. To Justice Marshall, this was "a hollow charade whereby Fourth Amendment claims are to be labeled premature until such time as they can be deemed too late." *Id.* at 97 (Marshall, J., dissenting).

Sure enough, in *United States v. Miller* two years later, 425 U.S. 435 (1976), the Court used the ever-misapplied "reasonable expectation of privacy" test to find that customers of financial services do not have a Fourth Amendment interest in details of their

financial lives because they have revealed them to financial services providers. *Id.* at 443-444.[4]

This confused and controversial pair of cases gave unsteady birth to a doctrine holding that individuals have no Fourth Amendment interest in information they relinquish to third-parties, even under fiduciary confidentiality and contractual privacy obligations. It prompted one member of this Court, concurring recently in *Jones*, to suggest more careful work in this area:

> [I]t may be necessary to reconsider the premise that an individual has no reasonable expectation of privacy in information voluntarily disclosed to third parties. *E.g.*, *Smith*, 442 U. S., at 742; *United States v. Miller*, 425 U. S. 435, 443 (1976). This approach is ill suited to the digital age, in which people reveal a great deal of information about themselves to third parties in the course of carrying out mundane tasks. People disclose the phone numbers that they dial or text to their cellular providers; the URLs that they visit and the e-mail addresses with which they correspond to their Internet service providers; and the books, groceries, and medications they purchase to online retailers.

Jones, 132 S. Ct. at 957 (Sotomayor, J., concurring).

California Bankers did not approve a scheme like the warrantless search scheme at issue in this case against a Fourth Amendment challenge. It did set in motion a line of decisions that have had uneven and

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[4] Customers of Los Angeles hotels are not present in this case, so *Miller* has no bearing here.

regrettable results given consensus in this Court that it should "assur[e] preservation of that degree of privacy against government that existed when the Fourth Amendment was adopted." *Kyllo*, 533 U.S. at 34; *Jones*, 132 S. Ct. at 950 (majority opinion); *id.* at 958 (Alito, J., concurring in the judgment).

The Los Angeles warrantless search scheme provides this Court an opportunity to continue improving Fourth Amendment doctrine. Recognize that the statute authorizes seizures and searches. Affirm that it is indeed "papers" being searched. And find, consistent with strong and long-lasting precedent, that such searches require probable cause and a warrant.

CONCLUSION

In 1946, Justice Murphy dissented in *Okla. Press Publishing Co. v. Walling*, 327 U.S. 186, which approved non-judicial subpoenas issued by administrative agents. "Excessive use or abuse of authority," he argued, "can not only destroy man's instinct for liberty but will eventually undo the administrative processes themselves. Our history is not without a precedent of a successful revolt against a ruler who 'sent hither swarms of officers to harass our people.'" *Id.* at 218 (Murphy, J., dissenting).

There is no second American revolution brewing among innkeepers in Los Angeles, but the conditions they suffer—some of them new Americans—are too akin in this respect to the plight of colonists under King George: the warrantless search scheme denies them dominion over themselves, their property, and their papers. These are things the American revolutionaries fought to make their right.

"A people's desire to cooperate with the enforcement of a statute is in direct proportion to the respect for individual rights shown in the enforcement process," Justice Murphy said. "Liberty is too priceless to be forfeited through the zeal of an administrative agent." *Id.* at 219.

The vast majority of hoteliers want nothing more than peaceable operation of their small businesses. They would undoubtedly cooperate with law enforcement fully if they were accorded their full rights. The warrantless search scheme must fall in order to reset the rule of law in Los Angeles. Doing so will restore constitutional order and once again make hoteliers partners in defense of the social order.

The Ninth Circuit's judgment should be affirmed.

Respectfully submitted,

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AMICUS CURIAE BRIEF

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CITY OF LOS ANGELES,

Petitioner,

vs.

NARANJIBHAI PATEL, RAMILABEN PATEL, LOS ANGELES LODGING ASSOCIATION,

Respondents.

On Writ Of Certiorari To The United States Court Of Appeals For The Ninth Circuit

BRIEF OF THE COUNTY OF LOS ANGELES, THE LEAGUE OF CALIFORNIA CITIES, AND THE CALIFORNIA STATE ASSOCIATION OF COUNTIES AS AMICI CURIAE IN SUPPORT OF PETITIONER CITY OF LOS ANGELES

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The County of Los Angeles, The League of California Cities, and The California State Association of Counties respectfully submit this amici curiae brief in support of Petitioner.

INTERESTS OF THE AMICI CURIAE[1]

The County of Los Angeles encompasses more than 4,000 square miles, with a population of over 10 million residents spread among 88 cities and 120 unincorporated communities. The Los Angeles County Sheriff's Department has more than 9,500 sworn law enforcement personnel who provide police services to unincorporated areas of the County, and work in conjunction with other law enforcement agencies, such as the Los Angeles Police Department ("LAPD"), in combating the very serious problem of human trafficking and the sexual exploitation of children.

The League of California Cities is an association of 473 California cities dedicated to protecting and restoring local control to provide for the public health,

[1] Pursuant to Supreme Court Rule 37.3(a), this brief is being filed with the Court with the consent of all parties, as reflected on the Court's docket in the blanket consent letters filed by petitioner and respondents on November 17, 2014 and November 18, 2014, respectively. This brief was not authored in whole or in part by counsel for a party, and no person or entity, other than amici curiae, their members, or their counsel has made a monetary contribution to the preparation or submission of this brief.

safety, and welfare of their residents, and to enhance the quality of life for all Californians. The League is advised by its Legal Advocacy Committee, which is comprised of 24 city attorneys from all regions of the State. The Committee monitors litigation of concern to municipalities, and identifies those cases that have statewide or nationwide significance. The Committee has identified this case as having such significance.

The California State Association of Counties ("CSAC") is a non-profit corporation. The membership consists of the 58 California counties. CSAC sponsors a Litigation Coordination Program, which is administered by the County Counsels' Association of California and is overseen by the Association's Litigation Overview Committee, comprised of county counsels throughout the state. The Litigation Overview Committee monitors litigation of concern to counties statewide and has determined that this case is a matter affecting all counties.

INTRODUCTION AND SUMMARY OF ARGUMENT

17 children condemned to a life of continued abuse and exploitation in just seven months. That is potentially the price of insulating hotel and motel guest registries from on-demand review by law enforcement officers.

Specifically, 17 fewer children have been rescued from human trafficking by LAPD officers following

suspension of enforcement of Los Angeles Municipal Code section 41.49 after the Ninth Circuit's decision in *Patel v. City of Los Angeles*, 738 F.3d 1058 (9th Cir. 2013), than were rescued in a similar period prior to the decision.

As amici discuss, this disturbing information is not surprising. Motels and hotels play a central role in the business of human trafficking and sexual exploitation of children. The requirement that such business owners record identifying information on every guest, and provide such information to law enforcement officers on demand, is a significant tool that enhances the ability of law enforcement officers to apprehend and prosecute those who would exploit children, and more significantly, allows officers to rescue children from these most dire of circumstances.

The purpose of this brief is to provide the Court with real world data on how the hotel and motel industry plays a central part in human trafficking and the sexual exploitation of children. The brief provides concrete examples of the manner in which regulations such as section 41.49, allow law enforcement officers to bring criminals to justice and save children from further abuse, illustrating the effectiveness and importance of such provisions in addressing public health and safety issues in cities and counties across the country.

ARGUMENT

MOTELS AND HOTELS PLAY A CENTRAL ROLE IN THE BUSINESS OF HUMAN TRAFFICKING AND THE SEXUAL EXPLOITATION OF CHILDREN THAT CAN ONLY BE EFFECTIVELY COMBATED BY REQUIRING SUCH BUSINESSES TO RECORD GUEST INFORMATION AND PROVIDE IT TO LAW ENFORCEMENT OFFICERS ON DEMAND.

A. The Intimate Link Between Motel And Hotel Occupancy And The Sexual Exploitation Of Children Through Human Trafficking.

Saving Innocence is a nonprofit organization that works with local law enforcement in the Los Angeles County area in pursuit of its core mission of protecting children from sexual exploitation through prostitution.[2] The organization provides children who have been taken into custody during law enforcement operations with shelter, counseling, and access to social services, with the goal of helping them leave the life of sexual slavery and recover from its devastating effects.[3]

35% of children taken into the Saving Innocence Project were recovered by law enforcement in

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[2] http://www.savinginnocence.org/about/ (last accessed December 15, 2014).

[3] *Id.*

operations against motels and hotels.[4] Their average age at the time of being taken into custody is 15, though the average age at which they first entered into a life of sexual exploitation is 12.[5]

Many of the children from Saving Innocence report that their first entry into this living nightmare started when a trafficker secured a motel room for them to stay in while having no place to live.[6] It is there that they may have been beaten for the first time and coerced into prostitution.[7] The clear willingness of motel owners to "look the other way" or "turn a blind eye" no matter what happens within the walls of the rooms snuffs out any hope that a call for help will bring relief.[8] One Saving Innocence client reported being savagely beaten by her pimp and screaming, but knowing that no help would be forthcoming from the owners of the motel and that no one was likely to call the police.[9]

Aside from serving as a starting point for entry into a life of sexual exploitation, the motels are an integral part of an ongoing transient and itinerant

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[4] Letter from Kim Biddle, Founder and Executive Director of Saving Innocence, to Los Angeles County Board of Supervisors (Dec. 3, 2014) at 1.

[5] *Id.*

[6] *Id.*

[7] *Id.*

[8] *Id*

[9] *Id.*

process by which the children are moved across state lines, and transported from motel to motel by a trafficker depending upon the perceived demand for services, such as a special sporting event, convention or the like.[10] Some children are moved on a daily basis, so that they do not know where they are at any given time, or even what day it is.[11]

Even if "settled" in a particular region, such as the vast area covered by Los Angeles County, these children may be moved from motel to motel throughout the county, from the city of Los Angeles, to the cities of Compton, Long Beach, Carson, Inglewood and Pasadena.[12] In some instances the trafficker may secure a room and force the child to perform sex with clients – "Johns" – in the room, with the trafficker later staying in the room.[13] Other times, the trafficker may have the Johns rent the room, and in some instances, the exploited children may be allowed to stay in the rooms once the Johns leave.[14]

Even after children are rescued and secured placement through programs such as Saving Innocence, these same motels ironically provide a hiding place for those children who resist assistance and flee the program, since the children have learned that

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[10] *Id.* at 1-2.

[11] *Id.* at 2.

[12] *Id.* at 1.

[13] *Id.* at 2.

[14] *Id.* at 1.

they may obtain a room on a cash basis from individuals unlikely to ask questions or provide information to authorities.[15]

Quite literally, from start to finish of the entire process, motels and hotels are intimately involved in the sexual exploitation of children on a commercial basis. For many such businesses, human trafficking is, very simply, a core part of their operation.

B. The Practical Application Of Los Angeles Municipal Code Section 41.49 And Similar Statutes In Combating Human Trafficking, And More Critically, Rescuing Children Victimized By The Direct Participation Of Motels And Hotels In Trafficking And Prostitution.

Los Angeles Municipal Code ("LAMC") section 41.49 and similar statutes throughout the nation combat the anonymity that shields human traffickers, their customers, and their victims from scrutiny. Requiring motels and hotels to record identifying information of all guests may deter Johns from participating at all, fearing later revelation of their identities. Traffickers too, may be deterred from using a particular hotel or motel if they are required to give verifiable identifying information that could lead to their arrest. As Los Angeles County Sheriff Jim McDonnell notes, "when motels accurately maintain

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[15] *Id.* at 2.

their registries, the criminal clientele moves on. At that point, legitimate business motel owners not only address operational deficiencies but make cosmetic improvements to attract law-abiding customers."[16]

Of course, merely requiring that such information be recorded in a timely fashion does not assure that it will be done, absent some realistic threat that the failure to record such information will be detected. The ability to demand on-the-spot production of registration books to verify that the information is being recorded is the only practical means to assure compliance with such regulations. Advance notice of such inspections through the procurements of an administrative warrant would afford those subject to the statute the opportunity to *ex post facto* manufacture identifying information, accurate or not, and therefore evade the underlying purpose of the ordinance.

But even putting aside the need to assure that accurate information is kept in the first instance through the threat of on-demand production of the registration material, the accurate recording and, more critically, production of such information is crucial to the ability of law enforcement to not simply combat prostitution, but more importantly, to rescue

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[16] Letter from Jim McDonnell, Los Angeles County Sheriff, to Los Angeles County Board of Supervisors (Dec. 15, 2014) at 3. Prior to his election as Sheriff, McDonnell served as an Assistant Chief of the Los Angeles Police Department and Chief of the City of Long Beach Police Department. *Id.* at 1.

those children ensnared in human trafficking. In an age in which information travels with the speed of a text message or a cell phone call, the ability to identify the occupants of rooms in a motel or hotel on an expedited basis is vital to the ability of law enforcement to combat prostitution and human trafficking in such businesses by enabling law enforcement to expeditiously arrest pimps and rescue children before they once again disappear into the labyrinth of seedy motels.[17]

Information provided to the Los Angeles County Sheriff's Department by local law enforcement agencies provides insight into the day-to-day application of section 41.49 and similar statutes. For example, in one incident, City of Long Beach Police Department detectives learned a 16-year-old runaway was involved in a commercial sex activity in the City of South Gate. The runaway had been arrested for prostitution and was currently advertising for commercial sex services on the internet. The detectives attempted to arrange an undercover operation to contact her, which led them to a motel. When she answered no further phone calls, detectives were able to inspect the motel ledger and quickly determine the room in which she and the suspect were most likely staying. Detectives went to the room and found her, naked and hiding under the bed, as well as the suspect, and took appropriate law enforcement action.[18]

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[17] *Id.* at 1.

[18] *Id.* at 1-2.

Without the ability to immediately inspect the registration ledger, this enforcement and rescue action would have been impossible. The officers would not have been able to secure a warrant, given the absence of information as to which of the numerous rooms the girl might be occupying. Similarly, a room by room search of the establishment would make finding the 16-year-old girl and the suspect impractical, as once such a large-scale operation commenced, the suspect would have had the opportunity to flee with his victim long before law enforcement officers might chance upon the correct room.

An incident involving LAPD detectives is similarly instructive. Detective Support and Vice Division received a tip that a 17-year-old runaway from Portland, Oregon was advertising for commercial sex on the internet. Vice detectives organized an undercover operation and detained the runaway. During an interview, she told investigators that two additional girls were with the trafficker at another nearby motel, but she did not know in what room they were staying. Detectives conducted a surveillance of the motel and saw two young females who met the description given to them by the 17-year-old runaway. The females were detained, but the trafficker was not with them, and they did not know his true name. However, they said he was due to return to the motel shortly. Investigators were able to quickly check the motel ledger where they obtained his true name and the vehicle he was driving. Being able to inspect the ledger without delay allowed the detectives to

apprehend the suspect while he was still in the area and prevent further exploitation of the two girls.[19]

In another incident, LAPD vice detectives worked with the Federal Bureau of Investigation to rescue two children who were runaways from out of state. Federal agents established that the two children were staying at a motel near Los Angeles International Airport with a violent trafficker. The motel had well over 100 rooms, making the task of surveillance nearly impossible on such a large location. Detectives asked the motel operator to inspect the ledger. Initially, he was uncooperative, however, after advising him of the provisions of section 41.49, he complied and the room was identified. Detectives contacted the occupants of the room, where two child victims were rescued and the trafficker was arrested.[20]

The incidents recounted above resulted in the arrest of three traffickers, but more importantly, the rescue of six children from a life of sexual exploitation. The effectiveness of section 41.49, and the devastating human cost of stripping law enforcement of this important regulatory tool in combating human trafficking and the sexual exploitation of children, is readily discerned from review of arrest and rescue statistics immediately prior to, and just after the City of Los Angeles suspended enforcement of the provision following the Ninth Circuit's en banc decision.

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[19] *Id.* at 2.

[20] *Id.*

Information received from the LAPD reveals that between June 1, 2013 and January 31, 2014 – when section 41.49 was still enforced – LAPD officers rescued 32 children from human trafficking. On February 10, 2014, the LAPD suspended enforcement of section 41.49. From March 1, 2014 through October 31, 2014, only 15 children were rescued – a 53% decline in rescues. Not surprisingly, there was also a sharp reduction in arrests for related offenses. Arrests for human trafficking fell 43%, with arrests for pimping and prostitution declining 66% and 23% respectively.[21]

The human cost of suspending enforcement of section 41.49 for as little as seven months is sobering – 17 fewer children rescued from the nightmare existence of human trafficking and sexual exploitation. As Los Angeles County Sheriff Jim McDonnell notes, "[h]uman sex trafficking, especially involving the exploitation of children, is a serious problem in Los Angeles and in many cities throughout the nation" and "[o]rdinances such as LAMC section 41.49 are an important tool for law enforcement to have in order to combat this growing problem, and to facilitate rescues and arrests that in some cases may not otherwise have been possible."[22]

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[21] *Id.*

[22] *Id.* at 1.

CONCLUSION

For the foregoing reasons, the judgment of the Ninth Circuit should be reversed.

Respectfully submitted,

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AMICUS CURIAE BRIEF

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CITY OF LOS ANGELES,

Petitioner,

v.

NARANJIBHAL PATEL, RAMILABEN PATEL, LOS ANGELES LODGING ASSOCIATION,

Respondents.

On Writ of Certiorari to the United States Court of Appeals for the Ninth Circuit

BRIEF OF DRUG FREE AMERICA FOUNDATION, INC., COMMUNITY ANTI-DRUG COALITIONS OF AMERICA, AND THE INSTITUTE ON GLOBAL DRUG POLICY AS *AMICI CURIAE* IN SUPPORT OF PETITIONER

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SAM, INC.

STUDENTS TAKING ACTION NOT DRUGS (STAND)

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INTEREST OF *AMICI CURIAE*[1]

Amici curiae are nonprofit organizations, for-profit corporations, policymakers, and individuals who share a common interest in combating drug trafficking, drug abuse, and other drug-related crimes in our communities:

Drug Free America Foundation, Inc. is a drug prevention and policy organization committed to developing, promoting and sustaining national and international policies and laws that will reduce illegal drug use and drug addiction. Drug Free America Foundation, Inc. is a Non-Governmental Organization (NGO) in special consultative status with the Economic and Social Council of the United Nations.

Community Anti-Drug Coalitions of America (CADCA) is a non-profit, member based organization that was founded in 1992 as an outgrowth of the President's Drug Advisory Council, and is headed by Major General Arthur T. Dean (U.S. Army, Retired). CADCA's mission is to build and strengthen the capacity of community coalitions to create safe, healthy and drug free communities. CADCA is the only national drug prevention organization that

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[1] The parties have consented to the filing of this brief in letters that are on file with the Clerk of the Court. In accordance with Supreme Court Rule 37.6, this brief was not written in whole or in part by counsel for any party and no person or entity other than counsel for *amici* has made a monetary contribution to the preparation and submission of the brief.

works at all governmental levels—federal, state, and local—to build and sustain community coalitions. CADCA represents more than 5,000 coalitions in the United States and has worked with international communities in 20 countries around the world.

The Institute on Global Drug Policy is an alliance of physicians, scientists, attorneys and drug specialists advocating public policies that curtail the use of illicit and misuse of licit drugs and alcohol.

Save Our Society From Drugs (S.O.S.) is a 501(c)(4) national nonprofit organization committed to establishing, promoting, and enabling sound drug laws and policies that will reduce illegal drug use, drug addiction and drug-related illness and death. S.O.S. works to educate our nation's lawmakers and activate grassroots anti-drug coalitions to combat drugs and the effects of drug use on our communities.

National Narcotics Officers Association Coalition (NNOAC) is a 501(c)(6) non-profit organization that provides a unified voice for state and local narcotics officers in the nation's capital. NNOAC is currently comprised of 40 individual state narcotic associations, the six Regional Information Sharing System projects and the Territory of Puerto Rico—representing more than 55,000 law enforcement officers from across the nation. NNAOAC serves as an umbrella organization, coordinating the efforts of these associations in our nation's capital.

The International Scientific and Medical Forum on Drug Abuse is a brain trust of the world's leading researchers involved in drug-related research and

physicians concerned about the problem of drug abuse.

The Coalition for a Drug Free California is a non-profit 501(c)(3) organization incorporated in the state of California. Its mission is to reduce youth drug use.

The National Institute of Citizen Anti-Drug Policy is a Christian outreach ministry for drug prevention, originated in Great Falls United Methodist Church, Great Falls, Virginia. Its purpose is to advocate and promote governmental anti-drug policies.

Mt. Hood Coalition Against Drug Crime is a citizen volunteer organization with a mission against illegal drug crime. Its purpose is to create a community free from illegal drug crime.

The National Drug-Free Workplace Alliance (NDWA) is a national network dedicated to the prevention of substance abuse in the workplace. NDWA has a two-fold mission—to directly assist small businesses in the state of Florida in establishing comprehensive drug free workplace programs and to support a national coalition of drug free workplace service providers.

Drug Free Projects is a non-profit organization organized in the state of Florida that works to prevent substance abuse.

The Manatee County Substance Abuse Coalition is a non-profit substance abuse prevention organization based and operating in Manatee County,

Florida, and focused on health and wellness across the lifespan.

Aegis Sciences Corporation is a for-profit forensic and healthcare laboratory focused on testing humans for legal and illegal substance abuse. Aegis Sciences Corporation knows first-hand the harm of substance abuse in our communities due to its provision of toxicology services to law enforcement, hospitals and coroners/medical examiners.

Oregonians Against Legalization of Marijuana is a citizen volunteer organization with a mission to bring awareness to the impacts of marijuana in our communities. Its purpose is to oppose the legalization of Marijuana.

Port Richmond Community Group is a volunteer community improvement organization, and a Registered Community Organization with the City of Philadelphia. Founded after its president's 17-year-old niece died from a heroin overdose, this group focuses on the devastation that drugs wreak on the local community and families.

SAM, Inc. is a non-profit organization incorporated in Delaware and doing business in California. It envisions a society where marijuana policies are aligned with the scientific understanding of marijuana's harms, and the commercialization and normalization of marijuana are no more. Its mission is to educate citizens on the science of marijuana and to promote health-first, smart policies and attitudes that decrease marijuana use and its consequences. SAM, Inc. is greatly concerned with preventing drug

trafficking, drug abuse, and drug-related crimes in our communities.

Students Taking Action Not Drugs (STAND) is a growing, student focused movement to disseminate accurate, science-based drug information on campuses to promote awareness among students.

The Take Back America Campaign was founded to deter and prevent adolescent use of marijuana and other drugs.

Ambassador Melvyn Levitsky, a retired Career Minister in the U.S. Foreign Service, is a prominent individual with years of experience in national and international drug policy who is deeply concerned about the drug problem in this country and supports sensible solutions to curb drug use here and around the world. Among many other aspects of his distinguished career, Ambassador Levitsky is a member of the University of Michigan's Substance Abuse Research Center; was elected by a vote of the United Nations Economic and Social Council to a seat on the International Narcotics Control Board; and formerly served as Assistant Secretary of State for International Narcotics Matters.

Peter Bensinger is a prominent individual who has years of experience in national and international drug policy, is deeply concerned about the drug problem in this country, and supports sensible solutions to curb drug use here and around the world. Among the many aspects of his distinguished career, Mr. Bensinger has served as Administrator of the United States Drug Enforcement Administration, as Director of the Illinois Department of Corrections, as

Chairman of the Illinois Youth Commission, and as a member of the Executive Committee of the International Association of Chiefs of Police and Chairman of its Narcotic and Dangerous Drug Committee. Mr. Bensinger currently serves on the Board of Directors of the DEA Educational Foundation, and is also Chief Executive Officer of the Prescription Drug Research Center (PDRC), which provides comprehensive risk management surveillance programs for prescription drugs. He is a nationally recognized expert on the issues of drugs and alcohol in the workplace, has authored a special report on this subject for the Harvard Business Review, and has been quoted in national and international publications on this subject. He received the first Lifetime Achievement Award from the Association of Former Federal Narcotic Agents and U.S. Drug Enforcement Educational Foundation; he has been recognized for his leadership efforts to combat drug abuse by the Mayor and City Council of Chicago—who declared August 10, 2006 "Peter Bensinger Day in Chicago"; and he has received honorary Doctor of Law degrees from San Marcos University in Lima, Peru, and Dankook University in Seoul, Korea, for outstanding leadership in International Drug Control.

Collectively, *amici* have extensive knowledge of the devastating impacts of drug use and drug-related crimes on individuals, communities, and the nation as a whole. *Amici* are actively involved with promoting policies and legislation aimed at the drug problem at both the local and national levels. Through their work, *amici* have become familiar with the particular problem of hotels and motels,

especially budget motels, serving as hotbeds for drug-related criminal activity. *Amici* believe that local laws like the guest registry inspection ordinance at issue in this case, Los Angeles Municipal Code § 41.49 ("LAMC § 41.49") are important and necessary tools for deterring drug crimes at these risky venues. Because similar laws exist throughout the country, *amici* believe the outcome of this case could have a far-reaching impact on the war that *amici* are helping our country wage against illicit drugs.

INTRODUCTION AND SUMMARY OF ARGUMENT

Criminal activity related to illegal drugs is a significant problem in virtually every community in the United States. Crimes ranging from illegal drug use, distribution, trafficking, and manufacturing are pervasive throughout the country, consuming extensive federal and local law enforcement resources and bringing with them addiction, violence, death, and other significant social costs.

One place that has become a haven for drug crimes is the American budget motel. Conveniently located along major thoroughfares, inexpensive, and easy to use anonymously and access without detection, budget motels attract drug dealers, drug manufacturers and drug users, among other criminals. These budget motels frustrate police in communities throughout the nation with their seemingly intractable illegal drug activity and other crime and disorder problems.

The City of Los Angeles, has enacted guest registry requirements to deter criminal activities at

motels by removing the anonymity that makes these facilities so conducive to crime—particularly, drug dealing, drug trafficking, drug use, and other drug-related crime. The City requires overnight lodging establishments to record basic information about their guests—including, the guest's name and address; the number of people in the guest's party; the make, model, and license plate number of the guest's vehicle, if parked on the property; the guest's date and time of arrival and scheduled date of departure; the room number assigned to the guest; the rate charged and the amount collected for the room; and the method of payment. LAMC § 41.49. Guests who pay for a room with cash or walk in without a reservation must also present a valid form of identification on check-in. *Id.* Pursuant to the ordinance, the guest registries collecting this information are subject to police inspection. *Id.*

Similar guest registry ordinances exist in communities throughout the United States. These laws serve an important role in shining a light in the dark areas of motels and assisting law enforcement in their efforts to eradicate drug-related crimes from communities.

ARGUMENT

I. BUDGET MOTELS OFTEN SERVE AS HUBS FOR ILLICIT DRUG CRIMES.

A. Conditions At Budget Motels Attract Drug-Related Criminal Activity.

American budget motels come from humble beginnings. They became popular in the 1930s, when

families began using automobiles to see the country. To accommodate these travelers, motels—a combination of the words "motor" and "hotel"—sprang up along major highways across the country. Motels served as family-friendly rest spots because they were conveniently located, offered rooms with no advance reservations at lower rates than hotels, were better equipped than campgrounds, and accepted cash payment. They also made arriving and departing quick and easy, as most were physically configured to allow access to rooms directly from the parking lot. *See* Karin Schmerler, *Disorder at Budget Motels*, Problem-Oriented Guides for Police No. 30 (U.S. Department of Justice, Office of Community Oriented Policing Services 2005), at 5-6; Joseph Petrocelli, *Crime at Budget Motels*, POLICE, Mar. 1, 2007, http://www.policemag.com/channel/patrol/articles/2007/03/patrol-response-to.aspx.

The very features that made budget motels attractive for travelling families now make them perfect locations to conduct criminal activity. In communities throughout the nation, budget motels have come to pose a unique challenge for law enforcement, often serving as nests for criminal activity—including illicit drug use, drug dealing, drug trafficking, and even drug manufacturing. *See* Schmerler, *Disorder at Budget Motels*, at 1-2, 5; Petrocelli, *Crime at Budget Motels*, http://www.policemag.com/channel/patrol/articles/2007/03/patrol-response-to.aspx; Gisela Bichler, Karin Schmerler & Janet Enriquez, *Curbing Nuisance Motels: An Evaluation of Police as Place Regulators*,

36 POLICING: AN INTERNATIONAL JOURNAL OF POLICE STRATEGIES & MANAGEMENT, no. 2, 438-39 (2013).

The anonymity afforded by the ability to rent cheap rooms without reservations, pay with cash, and access rooms without having to pass through a lobby or by a main desk makes budget motels attractive to the criminal element. Budget motels also are typically lightly staffed and do not provide security, adding to their conduciveness to criminal conduct. *See* Schmerler, *Disorder at Budget Motels*, at 2-6; Petrocelli, *Crime at Budget Motels*, http://www.policemag.com/channel/patrol/articles/2007/03/patrol-response-to.aspx; Bichler, Schmerler & Enriquez, *Curbing Nuisance Motels*, at 438-39.

Illicit drug crimes, in particular, can be undertaken with less risk at budget motels than in private residences. One reason is that other motel guests have little incentive to report criminal drug activity because they have no long-term stake in the facility. *See* Schmerler, *Disorder at Budget Motels*, at 2-3; Petrocelli, *Crime at Budget Motels*, http://www.policemag.com/channel/patrol/articles/2007/03/patrol-response-to.aspx. Another is that, due to seizure laws, dealing drugs out of motel rooms offers criminals some measure of protection from law enforcement seizures of homes, cars and other property connected to drug dealing. *See, e.g.*, Flynn McRoberts & Joseph Kirby, *Drug Dealers Check In At Cheap Motels*, CHI. TRIB., July 16, 1993, http://articles.chicagotribune.com/1993-07-16/news/9307160334_1_black-tar-heroin-seizure-drug.

In a common "motel setup," two or more individuals use aliases to rent at least two rooms. One room is used to set up drug deals, another to safeguard the narcotics in case of a police raid or an attempted robbery by the potential buyer, and a third room is sometimes used as a dummy room to mislead authorities and thieves. Drug deals are then arranged using pagers, texts, or cell phones as dealers and their associates inform buyers when and where to pick up the narcotics. In this manner, a dealer can use a motel for as many as 100 deals in the course of a day for as little as $40-$60. McRoberts & Kirby, *Drug Dealers Check In At Cheap Motels*, http://articles.chicagotribune.com/1993-07-16/news/9307160334_1_black-tar-heroin-seizure-drug; *see also* Schmerler, *Disorder at Budget Motels*, at 3 (noting that budget motels offer rooms at prices as low as $20, and up to a high of $80, per night).

Like drug dealers, drug manufacturers also may use motels as centers for their operations. Clandestine methamphetamine labs, for example, are routinely set up in places like motels that allow operators to move their operations in and out quickly. *See* Michael S. Scott & Kelly Dedel, *Clandestine Methamphetamine Labs 2nd Edition*, Problem-Oriented Guides for Police, No. 16 (U.S. Department of Justice, Office of Community Oriented Policing Services 2006), at 9; *see also* City of Portland, Oregon, *A Guide to Crime Prevention in Overnight Lodging*, https://www.portlandoregon.gov/police/article/31556) (describing how "meth cooks" can set up an operation in a motel room and manufacture methamphetamine in as little as 12 hours).

Numerous cities have invested resources in creating programs and guides to help motel owners identify criminal activity—and, in particular drug-dealing and drug manufacturing—taking place on their premises. *See, e.g.*, City of Portland, Oregon, *A Guide to Crime Prevention in Overnight Lodging*, https://www.portlandoregon.gov/police/article/31556); Columbia Police Dept., *Crime Free Hotel/Motel Program*, Columbia, MO (2000), available at http://www.gocolumbiamo.com/Police/Crime/Crime_Free/documents/crime_free_hotel_book.pdf; Hampton, Police Dept., *Hotel/Motel Interdiction Program*, Hampton, VA, http://www.hampton.gov/index.aspx?NID=757); Reno Police Dept., *Motel Interdiction Program*, Reno, NV (2006), available at http://www.popcenter.org/library/awards/goldstein/2006/06-43.pdf; *see also* Schmerler, *Disorder at Budget Motels*, at 18 (recommending resources for educating motel managers regarding effective crime prevention measures). The need for cities to take such action demonstrates just how pervasive the problem of drug-related crimes at budget motels has become in communities across the United States.

B. Reports Of Drug-Related Criminal Activity At Budget Motels Are Ubiquitous.

News articles throughout the country report on budget motels that drain community resources and serve as dangerous dens for drug-dealing, drug use, and other crimes. The following are just a handful of examples of news articles reporting on drug-related

criminal activity at budget motels in diverse communities across the nation.

1. Toccoa, Georgia

Police in Toccoa, Georgia, recently conducted a three-month undercover investigation into illegal drug activities at various area motels. According to the Toccoa Police Chief, "We started noticing a pattern where individuals were going from one motel to another motel renting rooms for the sole purpose to do nothing more than to sell or use narcotics." The Police Chief stated: "For far too long, these hotel establishments have served as 'hotbeds' for both those involved in the demand side and those involved in the supply side of illegal drug activity." Rob Moore, *Toccoa Motel "Hotbeds" Put On Notice About Illegal Drug Activity*, AccessNorthGa.com, Apr. 10, 2014, http://www.accessnorthga.com/detail.php?n=273618.

2. Columbus, Ohio

In June 2014, a Columbus, Ohio, motel was temporarily shut down after numerous complaints of drug activity and prostitution there. Covert operations had uncovered evidence of extensive drug dealing, including several purchases of heroin, cocaine, and oxycodone at the motel. Denise Yost & Rick Reitzel, *North Columbus Motel Closed After Allegations Of Drug Use, Prostitution*, nbc4i.com, June 24, 2014, http://www.nbc4i.com/story/25859412/north-columbus-motel-closed-after-allegations-of-drug-use-prostitution.

A year earlier, in June 2013, Columbus police executed a court order to board up another motel that officials said was "a haven for drug dealing and prostitution." According to the court order, Columbus police said they had been dispatched to the motel 497 times between January 1, 2012, and March 19, 2013. In court documents, police and prosecutors "paint[ed] a picture of constant drug activity, including the sale of heroin and crack cocaine" at the motel. Mark Ferenchik, *City Shuts Down North Side Motel, Calling It A Haven For Drug Dealers, Prostitutes*, COLUMBUS DISPATCH, June 13, 2013, http://www.dispatch.com/content/stories/local/2013/06/12/City-shuts-down-North-Side-motel.html.

3. Bellingham, Washington

The City of Bellingham, Washington, recently announced its intent to condemn the Aloha Motel after years of drug-related crime at the facility. According to city officials, there were two deaths, two confirmed drug overdoses, and several drug-related arrests at the motel in September 2014 alone. Local neighborhood associations described the motel as a magnet for drugs and crime in the area. The Bellingham Health Department confirmed methamphetamine contamination in 15 motel rooms in the area near the Aloha Motel in recent months, with 8 of those rooms at the Aloha Motel. The City of Bellingham previously condemned another hotel, the Bellingham Inn, in 2002 after pervasive drug crime at that facility. The City, in announcing that it sought to condemn the Aloha Motel, indicated that it is attacking the problem of drug crimes at motels by targeting one problem property at a time, and that its

plan would eventually include other motels with similar problems. Samantha Wohlfeil, *Concerned About Drug Activity, Bellingham Looks To Condemn Aloha Motel*, THE BELLINGHAM HERALD, Sept. 22, 2014, http://www.bellinghamherald.com/2014/09/22/3871987/concerned-about-drug-activity.html.

4. Los Angeles, California

Authorities in Los Angeles, California sought an injunction against a local motel "known as a hub for gang activity and alleged drug sales." City Attorney Mike Feuer said in a statement: "This noxious dynamic at the Motel corrodes public safety—including that of several young children currently living at the Motel—and causes a significantly disproportionate drain on law enforcement resources." In a 26-page complaint, the City Attorney alleged that undercover officers have observed known gang members and drug deals at the motel, which is located within three blocks of both a high school and an elementary school. Samantha Tata & Gordon Tokumatsu, *South LA Motel Near Schools Is "Stronghold" for Gang*, NBCLosAngeles.com, Dec. 20, 2013, http://www.nbclosangeles.com/news/local/Las-Palmas-Motel-South-Los-Angeles-Gang-Injunction-LA-City-Attorney-Mike-Feuer-Florencia-13-236814431.html.

5. Clearwater, Florida

In Clearwater, Florida, police responded to two motels located within blocks of each other nearly 900 times in an 18-month period for disturbances including drug offenses. Mike Deeson, *Two*

Clearwater Motels Draw Nearly 1,000 Police Calls, 10 News, Oct. 22, 2014, http://www.wtsp.com/story/news/investigations/2014/10/21/two-clearwater-motels-draw-nearly-1000-police-calls/17673173/.

6. Costa Mesa, California

The City of Costa Mesa, California, has identified 12 area motels that "siphon[] off disproportionate levels of police resources" because of the level of criminal activity, including drug-related crimes, that take place there. In 2011, these 12 motels accounted for 1,677 calls for service, an average of just under five per day. Costa Mesa police officers confirmed that "policing the motels is a substantial part of their jobs." Lauren Williams & Jill Cowan, *'Problem' Motels Drain Resources*, DAILY PILOT, Sept. 21, 2013, http://articles.dailypilot.com/2013-09-21/news/tn-dpt-me-0922-costa-mesa-motels-20130921_1_motels-costa-mesa-motor-inn-righeimer.

7. Tukwila, Washington

In Tukwila, Washington, a suburban city outside Seattle, federal and state law enforcement officers made arrests and seized three motels located in the same highway-adjacent area in August 2013 after a year-long investigation into criminal activity occurring in and around these facilities. Mike Carter & Christine Clarridge, *Raid Shuts 3 Motels on Troubled Strip of Tukwila*, SEATTLE TIMES, Aug. 27, 2013, http://seattletimes.com/html/localnews/2021696848_tukwilaraidsxml.html.

The three motels had been operated as "havens for drug dealing and sex crimes." Press Release, Federal Bureau of Investigation, U.S. Attorney's Office, Western District of Washington, Oct. 18, 2013. The motel owners and managers admitted to knowing that drugs were being sold on their premises and to profiting from that drug activity, including by directing customers to rooms where drugs were being sold after taking a fee from the customers. Carter & Clarridge, *supra*, http://seattletimes.com/html/localnews/2021696848_tukwilaraidsxml.html.

In 2011 and 2012, the three motels accounted for approximately 17 percent of the Tukwila Police Department's calls for service. Press Release, U.S. Attorney's Office, Western District of Washington, Oct. 22, 2013. After the motels were shut down, U.S. Attorney Jenny A. Durkan stated that the number of police calls to the immediate area dropped by one-third. *Id.* According to Durkan, these motels "were a blight on the community, creating an unsafe environment, and soaking up police resources to the detriment of the community." *Id.*; *see also* Gene Johnson, *Big Drop in Crime Since Feds Seized Tukwila Motels*, WASH. TIMES, Mar. 11, 2014, http://www.washingtontimes.com/news/2014/mar/11/big-drop-in-crime-since-feds-seized-tuwila-motels/.

8. Granite City, Illinois

Madison County, Illinois, officials filed court documents seeking to take possession under drug asset forfeiture laws of two Granite City motels where police have found repeated drug activity. The

filings stated that on three occasions since 2012, police busted drug labs or found residents in possession of drugs in the rooms of one of the motels. A tenant of that motel also fatally overdosed on heroin, ethanol and three other intoxicants in one of the rooms. At the second motel, authorities conducted four drug busts in the last year alone, and found another victim of a fatal overdose in one of the rooms. Elizabeth Donald, *Madison County Tries to Seize Two Crime-Ridden Motels*, BND.com, Aug. 29, 2014, http://www.bnd.com/2014/08/29/3373365/madison-county-trying-to-seize.html.

9. Gillette, Wyoming

In Gillette Wyoming, authorities have said that they are dealing with a rise in drug crimes at local hotels and are increasing detection and enforcement efforts, including the dispatch of drug-sniffing dogs. Associated Press, *Wyoming Police See More Drug Crimes at Hotels*, BILLINGS GAZETTE, Sept. 21, 2014, http://billingsgazette.com/news/state-and-regional/wyoming/wyoming-police-see-more-drug-crimes-at-hotels/article_70811d33-c598-52a7-bfca-a8fb6f28a208.html.

10. Cincinnati, Ohio

Earlier this month, police in Cincinnati, Ohio, mandatorily evacuated guests at a motel following a shooting. A long-term motel guest described a night away from the motel as a welcome respite from the drug activity and violence there. Police documents supported his claim, indicating that in the past two years, police have responded to 667 calls at the motel,

including for drug overdoses and a heroin bust, among other incidents. In the six months before the heroin raid, police responded to 185 calls for service, or about one every day, at the motel, and in the six months following the raid, police responded to 152 calls, visiting the motel 5.8 times a week. Patrick Brennan, *Nightmare at Dream Street Super 8 Motel*, cinncinnati.com, Dec. 3, 2014, http://www.cincinnati.com/story/news/crime/2014/12/02/nightmare-at-dream-street-super-8-motel/19801883.

11. Niles, Ohio

In Niles, Ohio, ten people were arrested this month during a raid on a suspected meth lab inside a local motel room. Authorities said that "the suspects appear to have been moving from hotel to hotel while making and selling the drug." Staff Report, *10 Arrested in Drug Bust at Niles Motel*, The Vindicator, Dec. 7, 2014, http://www.vindy.com/news/2014/dec/07/-arrested-in-drug-bust-friday-in-niles/.

12. New Stanton, Pennsylvania

Local police and state agents recently raided a motel in New Stanton, Pennsylvania, arresting individuals who had been running what authorities described as a "drive-through" drug operation out of several rooms at the motel. Renatta Signorini, *Arrests Halt "'Drive-Through" Drug Business At New Stanton Motel, Police Say*, Trib Live, Sept. 11, 2014, http://triblive.com/news/westmoreland/6779167-74/drug-morrison-police#axzz3MLItVEgx.

13. Pulaski County, Virginia

In Pulaski County, Virginia, police made three drug-related busts in a single week at one Budget Inn motel. During one of the busts, they discovered an inactive methamphetamine lab. Melissa Powell, *Pulaski Motel Is Besieged by Drugs*, ROANOKE TIMES, Apr. 2, 2013, http://www.roanoke.com/news/crime/pulaski_county/pulaski-motel-is-besieged-by-drugs/article_d812a69c-3f09-5f23-888a-28dc444589b1.html?mode=story).

14. Knoxville, Tennessee

A police raid on a Knoxville, Tennessee, motel that allegedly had been the scene of repeated drug sales marked the 30th such operation conducted in Knoxville between 2010 and 2012. According to authorities, the owners of the motel were aware of the illicit drug activity on the premises and helped their drug-dealing guests evade detection. In a two year period, police responded to 213 calls for service and made 30 arrests at this motel. Hayes Hickman, *KPD Nuisance Raid Targets Motel Drug Sales*, KNOXVILLE NEWS SENTINEL, Sept. 6, 2012, http://www.knoxnews.com/news/local-news/kpd-nuisance-raid-targets-motel-drug-sales.

15. Irvington, New Jersey

A motel in Irvington, New Jersey was a "regular stop for Irvington police officers, who were called to the motel as often as several times a day, usually for narcotics offenses," until a suspicious fire broke out there in 2005, killing several people. The city's police chief said "drugs were a blatant problem at the

motel," and there had been "numerous calls and raids, for narcotics concerns" there. Tina Kelley, *Drugs And Arrests: The Unseen Life Of A Motel*, N.Y. TIMES, Oct. 9, 2005, http://www.nytimes.com/2005/10/09/nyregion/09motel.html?pagewanted=all&_r=0.

II. GUEST REGISTRY LAWS LIKE LAMC § 41.49 ARE AN IMPORTANT TOOL IN DETECTING DRUG CRIMES AT BUDGET MOTELS.

The pervasive drug-related criminal activity at budget motel properties has presented serious challenges for law enforcement throughout the country. Guests conducting illicit business at these establishments—whether there to sell drugs, buy drugs, use drugs, or manufacture drugs—can slip in and out, anonymously and undetected. The City of Los Angeles, in enacting LAMC § 41.49, has adopted a strong deterrence strategy, intended to shine a light on these dark areas and remove the cloak of anonymity that facilitates drug-related criminal activity at these establishments.

LAMC § 41.49 requires hotel and motel operators to record basic information about their guests (such as the guest's name and address; the number of people in the guest's party; the make, model, and license plate number of the guest's vehicle, if parked on the property; the guest's date and time of arrival and scheduled date of departure; the room number assigned to the guest; the rate charged and the amount collected for the room; and the method of payment) and to make those registers available for

police inspection. LAMC § 41.49. Guests who pay for all or part of the cost of the room in cash and walk-in guests are also required to present an identification document at the time of check in. *Id.*

In setting forth the purpose behind § 41.49 and the city's strategy to deter drug-related crime in hotels and motels, the Los Angeles City Council recognized that "persons who rent rooms for illegal purposes generally pay for their rooms with cash and do not have advance reservations." L.A., Cal., Ordinance 177966 (Oct. 6, 2006). These persons prefer to remain anonymous. *Id.* The City of Los Angeles therefore concluded that requiring guests to provide identification "will discourag[e] the use of hotel and motel rooms for illegal activities, particularly prostitution and narcotics offenses." *Id.* "[R]equiring certain minimum information to be maintained in hotel and motel registers and inspection of hotel and motel registers by the police department is a significant factor in reducing crime in hotels and motels." *Id.*; *see also* JA 116 (Declaration of Detective Moore, explaining how those conducting criminal activity in motels are reluctant to provide true identifying information and how requiring such information deters criminal activity in these motels).

A guest identification requirement, like LAMC § 41.49 "reduces the perception of anonymity at motels, reinforces personal accountability for behavior, and provides police with important information should a crime occur—all reducing the motel's appeal to problem guests and visitors."

Schmerler, *Disorder at Budget Motels*, at 21; *see also id.* at 42.

By reducing drug-related crime at these problem budget motels, communities can reclaim valuable law enforcement and community resources that have been disproportionately spent on responding to criminal activity at these facilities, protect guests and residents with legitimate business at these motels, and support motel operators and managers in efforts to removal drug-related criminal activity from their properties. Guest registry laws like LAMC § 41.49 provide important tools to stop budget motels from serving as hubs for the drug trade in our country. And, by ending drug-related crime at these motels, cities can protect the surrounding communities.

CONCLUSION

For the foregoing reasons, the Ninth Circuit's en banc decision striking LAMC § 41.49 should be reversed.

Respectfully submitted.

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Petitioner,

v.

NARANJIBHAI PATEL, *et al.*,

Respondents.

ON WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE NINTH CIRCUIT

BRIEF OF *AMICUS CURIAE* ELECTRONIC FRONTIER FOUNDATION IN SUPPORT OF RESPONDENTS AND AFFIRMANCE

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QUESTION PRESENTED

Amicus curiae will address the following question:

Are facial challenges to ordinances and statutes permitted under the Fourth Amendment to the United States Constitution?

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INTEREST OF *AMICUS CURIAE*[1]

The Electronic Frontier Foundation ("EFF") is a member-supported, nonprofit public interest organization based in San Francisco, California, that works to protect free speech and privacy rights in an age of increasingly sophisticated technology. Founded in 1990, EFF currently has approximately 26,000 dues-paying members. EFF represents the interests of technology users in both court cases and broader policy debates surrounding the application of law in the digital age. As part of that mission, EFF has served as counsel or *amicus curiae* in many cases addressing Fourth Amendment issues raised by emerging technologies, including many cases heard by this Court. *See, e.g., Riley v. California*, 134 S. Ct. 2473 (2014); *United States v. Jones*, 132 S. Ct. 945 (2012); *City of Ontario, Cal. v. Quon*, 560 U.S. 746 (2010).

INTRODUCTION AND SUMMARY OF ARGUMENT

EFF submits this brief to answer the Court's first question in its grant of *certiorari*: Are facial challenges to ordinances and statutes permitted under the Fourth Amendment? The clear answer is yes.

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1. Pursuant to this Court's Rule 37.3(a), all parties have consented to the filing of *amicus* briefs. Pursuant to Rule 37.6, *amicus* affirms that no counsel for any party authored this brief in any manner, and no party, party's counsel, or any person other than *amicus*, their members, or their counsel made a monetary contribution to the preparation or submission of this brief.

1. Los Angeles Municipal Code § 41.49[2] requires hotel operators to maintain certain guest registry information and to make that information available to police officers on request without consent, a warrant, or other legal process. Failing to comply with a demand is a misdemeanor, punished by up to six months in jail and a $1,000 fine. *See* Los Angeles Municipal Code § 11.00(m); *see also Patel v. City of Los Angeles*, 738 F.3d 1058, 1061 (9th Cir. 2013) (en banc). Thus, contrary to this Court's decision in *See v. City of Seattle*, 387 U.S. 541, 544-45 (1967), the ordinance does not provide for pre-enforcement judicial review before penalties are imposed for noncompliance. Since no enforcement facts are needed to make this assessment, a facial challenge to the ordinance is an appropriate course of action.

2. As a practical matter, the Court already permits facial challenges on Fourth Amendment grounds in cases challenging statutes that authorize both search warrants and warrantless searches. Petitioner relies on *Sibron v. New York*, 392 U.S. 40, 59 (1968)—a case that addressed facial challenges to statutes authorizing warrantless searches—to argue that the Court should retreat from this practice. This Court should reject that argument. *Sibron* was concerned with the factual ripeness of facial challenges—*i.e.*, the lack of concrete facts about a statute's enforcement that ultimately renders a facial challenge premature. However, its stated rule turns not on ripeness, but instead on whether the statute authorized a warrantless, as compared to a warranted, search—a very different concern. The incongruity inherent in *Sibron*

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2. Unless otherwise indicated, all section references herein refer to the Los Angeles Municipal Code.

renders its rule overbroad, sweeping up facial challenges to statutes for which there are no ripeness concerns—such as the facial challenge to the ordinance at issue here. The Court has rejected *Sibron*'s rule in practice and should take this opportunity to formally overrule it. Indeed, *Sibron*'s purported prohibition on facial challenges to statutes authorizing warrantless searches is in direct conflict with this Court's long-standing admonition that, subject to a few closely guarded exceptions, warrantless searches are *per se* unreasonable. *Katz v. United States*, 389 U.S. 347, 357 (1967).

3. Facial challenges are necessary to protect key Fourth Amendment rights. A review of the Court's jurisprudence concerning a variety of constitutional rights, including free speech, privacy and equal protection, illustrates that limiting statutes to as-applied attacks can lead to under-enforcement of constitutional norms. For example, many of the concerns expressed in the First Amendment context—including chilling effects, excess discretion, and lack of visibility—apply equally in Fourth Amendment cases. *See City of Lakewood v. Plain Dealer Publ'g Co.*, 486 U.S. 750, 759 (1988); *see also Stanford v. State of Tex.*, 379 U.S. 476, 484-85 (1965) (noting that the First, Fourth, and Fifth Amendments are "closely related, safeguarding not only privacy and protection against self-incrimination but conscience and human dignity and freedom of expression as well") (internal quotations and citation omitted). This is especially true in the modern age, when much electronic surveillance is insulated from as-applied challenges because it does not result in a criminal prosecution.

This Court should affirm.

ARGUMENT

I. This Court Has Permitted and Should Continue to Permit Fourth Amendment Facial Challenges to Statutes That Authorize Warrantless Searches.

A. The Court Has Consistently Allowed Fourth Amendment Facial Challenges.

The Los Angeles Ordinance at issue here violates the Fourth Amendment on its face because it does not provide for pre-enforcement judicial review before penalties for noncompliance are levied. *See* Los Angeles Municipal Code § 11.00(m); *Patel*, 738 F.3d at 1063; *See*, 387 U.S. at 544-45. The Court does not need additional, specific enforcement facts to address this issue—it can determine the constitutionality of the ordinance by looking at its language alone.

This Court routinely decides facial challenges to statutes—most commonly in the First Amendment context. *See, e.g., United States v. Alvarez*, 132 S. Ct. 2537, 2547 (2012) (facial challenge to Stolen Valor Act, 18 U.S.C. § 704, based on Act's "plain terms"); *Citizens United v. Fed. Election Comm'n*, 130 S. Ct 876, 888 (2010) (facial challenge to election campaign contribution limits in 2 U.S.C. § 441b); *United States v. Stevens*, 130 S. Ct. 1577, 1581-82 (2010) (facial challenge to criminal prohibition on commercial creation of depictions of animal cruelty in 18 U.S.C. § 48). But this Court has permitted facial challenges in non-First Amendment contexts, as well. *See Sabri v. United States*, 541 U.S. 600, 609-10 (2004) (stating, in dicta, that overbreadth challenges are not restricted to First Amendment cases) (citing *Aptheker v. Secretary*

of State, 378 U.S. 500 (1964) (finding statute on its face unconstitutionally restricted right to travel); *Stenberg v. Carhart*, 530 U.S. 914, 938-946 (2000) (invalidating partial-birth abortion statute on its face); *City of Boerne v. Flores*, 521 U.S. 507, 532-535 (1997) (finding portion of Religious Freedom Restoration Act violated Fourteenth Amendment on its face).

As one scholar has documented, in several Supreme Court terms, including as recently as the 2009 term, "the Court adjudicated more facial challenges on the merits than it did as-applied challenges." Richard H. Fallon, Jr., *Fact and Fiction About Facial Challenges*, 99 Cal. L. Rev. 915, 918 (2011) (highlighting 1984, 1989, 1994, 1999, 2004, 2009 terms); *see also* Richard H. Fallon, Jr., *As-Applied and Facial Challenges and Third-Party Standing*, 113 Harv. L. Rev. 1321, 1322 (2000).

This Court has permitted facial challenges under the Fourth Amendment, too, and has explicitly permitted facial challenges to statutes that authorize the issuance of search warrants. *See Berger v. New York*, 388 U.S. 41, 55-60 (1967) (finding state statute authorizing *ex parte* order for eavesdropping to be "deficient on its face" for its failure to incorporate the Fourth Amendment's particularity requirements). Such challenges are permitted because a warrant is obviously invalid "if the procedure for the issuance of the warrant is inadequate to ensure the sort of neutral contemplation by a magistrate of the grounds for the search and its proposed scope, which lies at the heart of the Fourth Amendment." *Sibron*, 392 U.S. at 59 (citations omitted). In these circumstances, there is no need to wait for a warrant to be issued before a constitutional challenge can be considered by a court.

The only question here, then, is whether the Fourth Amendment also permits facial challenges to statutes that authorize *warrantless* searches. A cursory search reveals that this Court has in fact entertained such challenges. For example, in *Skinner v. Railway Labor Executives Association*, the Court considered a facial challenge to regulations promulgated by the Federal Railroad Administration requiring breath and urine testing by private railroads—*i.e.*, a regulatory scheme that permitted programmatic or broad searches without individualized suspicion. 489 U.S. 602, 614 (1989). The lawsuit was filed the day before the regulations went into effect. *See Railway Labor Executives' Ass'n v. Burnley*, 839 F.2d 575, 577 (9th Cir. 1988). This Court was able to consider (and ultimately uphold) the constitutionality of the regulations in the absence of a specific person who had been injured by the regulations because, due to "the standardized nature of the tests and the minimal discretion vested in those charged with administering the program, there [we]re virtually no facts for a neutral magistrate to evaluate." *Skinner*, 489 U.S. at 622.

Skinner is just one example. In *Nixon v. Administrator of General Services*, the Court reviewed and rejected a Fourth Amendment challenge to the "facial validity" of the Presidential Recordings and Material Preservation Act. 433 U.S. 425, 430, 439, 458-74 (1977). In *California Bankers Ass'n v. Shultz*, the Court considered pre-enforcement facial challenges to recordkeeping and reporting requirements under the Bank Secrecy Act of 1970. 416 U.S. 21, 42 (1974). Finally, in *Torres v. Puerto Rico*, the Court invalidated a search of luggage under the authority of a Puerto Rican statute. 442 U.S. 465, 471 (1979). While the Court did not state unequivocally that it

found the statute invalid on its face, the opinion's language strongly suggests that it did. *See* 442 U.S. at 471 ("The search . pursuant to Public Law 22 did not satisfy the requirements of the Fourth Amendment as we heretofore have construed it Public Law 22 does not require, and the officers who made the search challenged here did not have, probable cause . . . Public Law 22 requires no warrant, and none was obtained before appellant's bags were searched.") (footnote omitted).

Further, *United States v. Salerno* permits facial challenges where the challenged statute or ordinance authorizes searches that violate a Fourth Amendment rule in every instance. 481 U.S. 739, 745 (1987). The ordinance at issue here presents that very situation. As the parties stipulate, § 41.49 authorizes police officers to inspect hotel guest records at any time, without either consent or a search warrant.[3] *Patel*, 738 F.3d at 1061. This Court has already established that a statute authorizing warrantless inspections in connection with an administrative inspection scheme directed at ensuring compliance

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3. Although not at issue in this case, *amicus* believes hotel guests themselves have a reasonable expectation of privacy in the information the law requires hotels to collect and retain on them. The so-called third-party doctrine for business records should not deprive hotel guests of an independent Fourth Amendment interest in this information. *See United States v. Jones*, 132 S. Ct. 945, 957 (2012) (Sotomayor, J., concurring) ("I would not assume that all information voluntarily disclosed to some member of the public for a limited purpose is, for that reason alone, disentitled to Fourth Amendment protection."). *Amicus* similarly believes that the government's mandating the keeping of such records for the purpose of government access raises serious constitutional questions.

with a non-criminal regulatory regime must afford the party subject to the inspection an opportunity to "obtain judicial review of the reasonableness of the demand prior to suffering penalties for refusing to comply."[4] *See*, 387 U.S. at 544-45. Any statute authorizing an administrative search that fails to provide such an opportunity violates this Court's own Fourth Amendment rule each time the government relies on it to authorize a search. As the *en banc* Ninth Circuit found, § 41.49 is such a statute and is thus unconstitutional in every instance.

While some searches of hotel guest records would be valid under the Fourth Amendment due either to the hotel's consent or exigent circumstances, Pet'r's Br. At 19-20, in such cases, a Fourth Amendment exception—and not the ordinance—would authorize the search. As Justice Breyer stated in *City of Chicago v. Morales*:

> The ordinance is unconstitutional, not because a policeman applied this discretion wisely or poorly in a particular case, but rather because

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4. *Amicus* questions whether the Court of Appeals correctly characterized the Los Angeles inspection scheme as administrative. Petitioners' defense of the ordinance relies heavily on the city's interest in crime control. *See, e.g.*, Pet'r's Br. at 2 (describing § 41.49 as a "simple strategy to use sunlight to deter crime" in "'parking-meter motels' that are a blight in many high-crime areas"). If the Court views § 41.49 as instead authorizing criminal searches, a search pursuant to the statute would not qualify as administrative under *See* and would require a warrant. *See Michigan v. Tyler*, 436 U.S. 499, 511-12 (1978). In that case, the lack of a warrant requirement in § 41.49 alone would support its unconstitutionality and its potential for facial challenge. *See Berger*, 388 U.S. at 55-60.

> the policeman enjoys too much discretion in *every* case. And if every application of the ordinance represents an exercise of unlimited discretion, then the ordinance is invalid in all its applications.

527 U.S. 41, 71 (1999) (Breyer, J., concurring) (emphasis in original). However, every individual search conducted *pursuant to the ordinance*—not pursuant to a pre-existing Fourth Amendment exception—would be *per se* unconstitutional given the statute's failure to provide an opportunity for pre-enforcement review by a judicial officer. The Court of Appeal's decision in this case is consistent with *Salerno* in precisely this way; the statute's failure to include such an opportunity for review renders its every application unconstitutional. *See Patel*, 738 F. 3d at 1065. No further facts regarding the statute's enforcement are needed to assess its constitutionality, and the statute's constitutionality can be challenged on its face.

B. The Court Should Reject the Categorical Rule Espoused by *Sibron*.

1. *Sibron*'s binary distinction between permissible and impermissible Fourth Amendment facial challenges does not hold up to scrutiny.

In arguing that the Court of Appeals erred in permitting a Fourth Amendment facial challenge to § 41.49, Petitioners point to the statement in *Sibron* that "[t]he constitutional validity of a warrantless search is pre-eminently the sort of question which can only be decided in the concrete factual context of the individual

case." 392 U.S. at 59. But as outlined above, the Court has not adhered to this rule and has in fact, post *Sibron*, considered the facial validity of statutes purporting to authorize warrantless searches. *See supra* at pp. 3-6.

Furthermore, the binary distinction suggested by *Sibron*—between challenges to warrantless searches, which must be as-applied, and challenges to "the adequacy of [statutory] procedural safeguards" authorizing search warrants, which can be made on the face of the statute—does not makes sense. *See Sibron*, 392 U.S. at 59 (citing *Berger*, 388 U.S. at 41).

According to *Sibron*, the statute challenged in *Berger* was susceptible to facial challenge because its "operative categories"—its standards for issuing a warrant—clearly implicated the Fourth Amendment. *Sibron*, 392 U.S. at 60; *see also Berger*, 388 U.S. at 60 (finding that the statute's "blanket grant of permission to eavesdrop" was without the "judicial supervision or protective procedures" required by the Fourth Amendment). By contrast, *Sibron* held that the terms of its challenged statute were "elastic" from a Fourth Amendment perspective and "susceptible of a wide variety of interpretations." 392 U.S. at 59-60 & n. 20. But even under this reasoning, any statute that on its face violates a settled, categorical Fourth Amendment rule—thereby rendering unconstitutional all searches authorized under it—should be subject to facial challenge. Indeed, as in *Berger*, the only "operative categories" of any such statute would be categories of the Fourth Amendment. *See id.* at 60.[5]

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5. Part of the concern about interpreting the "elastic" statute in *Sibron* likely came from the fact that *Sibron* was decided the

The ordinance at issue in this case is one example of such a statute. By failing to require pre-enforcement judicial review of the search, and by making it a crime to refuse an officer's demand to inspect the records, the ordinance fails to meet basic minimum requirements under the Fourth Amendment. It is easy to envision other examples. In *City of Indianapolis v. Edmond*, this Court found that although suspicionless stops at a highway checkpoint may be constitutional when "designed primarily to serve purposes closely related to the problems of policing the border or the necessity of ensuring roadway safety," stops that lack "some measure of individualized suspicion" and "whose primary purpose [is] to detect evidence of ordinary criminal wrongdoing" violate the Fourth Amendment. 531 U.S. 32, 41-42 (2000). A city ordinance establishing checkpoints that allow police to stop and search cars without any individualized suspicion of wrongdoing solely for the purpose of crime control clearly violates *Edmond* and the Fourth Amendment. There is no need to wait for a driver to be stopped and

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same day as *Terry v. Ohio*, 392 U.S. 1 (1968), which authorized for the first time a brief investigatory detention and pat down for weapons if law enforcement had reasonable suspicion of criminal activity. The statute at issue in *Sibron* permitted New York police to stop and question a person reasonably suspected of committing a crime. *Sibron*, 392 U.S. at 43. Thus, at the time the statute was under review, the Court had only just announced a new Fourth Amendment rule whose future applications were uncertain. *See Terry*, 392 U.S. at 29 ("These limitations will have to be developed in the concrete factual circumstances of individual cases. *See Sibron v. New York, post*, p. 40, decided today."). Here, the Fourth Amendment rule that the Los Angeles ordinance fails is almost fifty years old; thus, unlike *Terry*, future applications of the statute to clearly established Fourth Amendment requirements are certain.

searched to allow a court to examine the factual context of the individual case before a court can assess whether the ordinance violates the Fourth Amendment; it is simply unconstitutional on its face.

Similarly, a state law that allows police to search the data on an arrestee's cell phone after his arrest, without any probable cause or individualized suspicion that the data contains evidence of criminal activity, clearly violates the Fourth Amendment. *Riley v. California*, 134 S. Ct. 2473, 2493 (2014). There is no need to wait for arrestees to have the data on their phones searched and their privacy violated before the Court can determine whether the law violates the Fourth Amendment; it clearly does.

Like legislation that might violate *Edmond* and *Riley*, there is similarly no need to review the facts surrounding the enforcement of § 41.49 because its unconstitutionality is clear on its face. To follow *Sibron*, however, and to prohibit facial challenges against these sorts of laws, would allow legislative bodies to enact unconstitutional statutes secure in the knowledge that such statutes could only be challenged "as applied."

2. *Sibron*'s concern with ripeness does not mean facial challenges should be impossible under the Fourth Amendment.

In some cases, a pre-enforcement facial challenge to a statute is not ripe for adjudication because there may be instances where enforcement of the statute would not violate the Fourth Amendment and thus the statute's constitutionality turns on facts regarding its enforcement. This was the Court's concern in *Sibron*.

But *Sibron*'s attempt to address ripeness concerns by categorically prohibiting facial challenges to statutes authorizing warrantless searches is unnecessarily overbroad. As explained above, every application of § 41.49 is unconstitutional, given its failure to adhere to *See*'s Fourth Amendment rule that a party subject to an administrative inspection request be granted an opportunity to "obtain judicial review of the reasonableness of the demand prior to suffering penalties for refusing to comply." *See*, 387 U.S. at 544-45. The Court does not need enforcement facts to make this assessment, and the ripeness concerns present in *Sibron* are not present here. It is therefore illogical to apply *Sibron* categorically, as Petitioner advocates.

To the extent a statute is susceptible to "elastic" interpretations that render some searches reasonable and others unreasonable, courts can address those concerns by noting that a facial challenge is inappropriate for the specific statute at issue or find that the issue is not yet ripe for adjudication. In practice, this Court has already done precisely that. For example, in *California Bankers*, the Court rejected a facial challenge on ripeness grounds without upholding the statute on the merits and without prejudice to future facial challenges. 416 U.S. at 51. Meanwhile, the Court also decided a host of pre-enforcement challenges to the recordkeeping requirements of the 1970 Bank Secrecy Act and regulations promulgated under it without any concern for its pre-enforcement nature. *Id.* at 41-42 (explaining that the case came to the Court after a district court issued a temporary restraining order against enforcement of various provisions of the Act and a three-judge district court enjoined enforcement of

certain provisions).[6] While the Court expressly upheld the Act's recordkeeping and reporting requirements against a Fourth Amendment challenge, *id.* at 52-54, 63, it refrained from addressing the depositor-plaintiffs' challenge to another part of the Act's domestic reporting requirements, explaining that the plaintiffs lacked standing and that their Fourth Amendment claims therefore could "not be considered on the record before [the Court]." *Id.* at 69. The Court did not, however, foreclose the opportunity for a plaintiff with standing to bring a facial challenge to the domestic reporting requirements.

Conversely, in *Skinner*, the Court allowed a facial challenge to a regulatory scheme that authorized warrantless searches even though that challenge was brought before the statute went into effect. *See Skinner*, 489 U.S. at 622 ("[I]n light of the standardized nature of the tests and the minimal discretion vested in those charged with administering the program, there are virtually no facts for a neutral magistrate to evaluate."). Because enforcement facts would not have affected the Court's analysis of the statute in *Skinner*, ripeness was not an issue.

When a litigant clearly has standing to challenge a statute, as Respondents do here, the only question a court should consider in assessing whether the statute can be subject to a facial challenge is whether the statute itself supplies all the necessary "facts" to determine if

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6. Indeed, while the Government objected to the lower court's facial invalidation of the statute, this Court ruled "it is the actual regulations . . . and not the broad authorizing language of the statute, which are to be tested against the standards of the Fourth Amendment." *Cal. Bankers*, 416 U.S. at 44.

the relevant Fourth Amendment rule has been violated. Because § 41.49 supplies all the necessary facts to determine its constitutionality, the Court of Appeals correctly allowed a facial challenge to proceed.

This Court's own precedent thus illustrates that ripeness can be addressed on a case-by-case basis, regardless of whether the statute purports to regulate warrants. Statutes that require additional facts would simply not be facially invalid or ripe for adjudication. Petitioner's position would sweep up facial challenges to statutes that are unconstitutional in every application and where ripeness is not even a concern.

C. Allowing Facial Challenges Is Consistent with the Court's Fourth Amendment Jurisprudence and the Purposes of the Amendment.

Sibron's categorical rule is also inconsistent with the purpose of Fourth Amendment law, because it prevents meaningful challenges to statutes that clearly violate that constitutional right. Warrantless searches such as those authorized by § 41.49 not only contravene the core requirement of the Fourth Amendment—neutral and prospective judicial review of probable cause and particularity—they also conflict with the Fourth Amendment's underlying purpose: "to prohibit the general warrants and writs of assistance that English judges employed against the colonists." *Virginia v. Moore*, 553 U.S. 164, 168-69 (2008); *see also Riley*, 134 S. Ct. at 2494; *Payton v. New York*, 445 U.S. 573, 583 (1980) ("indiscriminate searches and seizures conducted under the authority of 'general warrants' were the immediate evils that motivated the framing and adoption

of the Fourth Amendment."). For this reason, the Court has consistently held that warrantless searches are *per se* unreasonable, "subject only to a few specifically established and well-delineated exceptions." *California v. Acevedo*, 500 U.S. 565, 580 (1991) (internal quotations and citations omitted); *see also Mincey v. Arizona*, 437 U.S. 385, 390 (1978); *Katz*, 389 U.S. at 357.

Within the category of warrantless searches, suspicionless searches are especially disfavored. The Fourth Amendment "generally bars officials from undertaking a search or seizure absent individualized suspicion." *Chandler v. Miller*, 520 U.S. 305, 308 (1997); *see also Terry*, 392 U.S. at 21, n. 18 (the "demand for specificity in the information upon which police action is predicated is the central teaching of this Court's Fourth Amendment jurisprudence"). To enforce this basic Fourth Amendment norm, the "category of constitutionally permissible suspicionless searches" is "closely guarded." *Chandler*, 520 U.S. at 309.

Prohibiting ripe facial challenges also runs counter to the Court's desire to craft workable, bright-line rules for law enforcement. *See, e.g., Thornton v. United States*, 124 S. Ct. 2127, 2132 (2004) (noting the "need for a clear rule, readily understood by police officers"). Cases like *Edmond*, which held that highway stops that lack "some measure of individualized suspicion" and "whose primary purpose [is] to detect evidence of ordinary criminal wrongdoing" contravene the Fourth Amendment, articulate such clear Fourth Amendment rules—both for what is permitted and what is prohibited. *See Edmond*, 531 U.S. at 41-42.

However, enunciating clear rules is only the first step; enforcement of such rules is equally necessary. Facial adjudication promotes enforcement of clear rules by permitting invalidation of unconstitutional rules sooner rather than later. As the Court stated in *Atwater v. City of Lago Vista*, 532 U.S. 318, 347 (2001), "we have traditionally recognized that a responsible Fourth Amendment balance is not well served by standards requiring sensitive, case-by-case determinations of government need, lest every discretionary judgment in the field be converted into an occasion for constitutional review." Yet that is precisely what would result from a regime permitting only as-applied challenges to statutes that authorize warrantless searches.

Sibron's rule—which purportedly insulates from facial challenges statutes that on their face violate core Fourth Amendment principles—is thus inconsistent not only with how this Court actually treats Fourth Amendment facial challenges, but also the broad themes of this Court's Fourth Amendment jurisprudence. The Court has already rejected the rule in practice, and it should take this opportunity to formally overrule it.

II. Facial Challenges Are Necessary to Protect Key Fourth Amendment Rights, Particularly in an Age of Electronic Surveillance.

This Court's jurisprudence on facial challenges in other contexts creates a set of principles that apply equally to the Fourth Amendment and further weigh against *Sibron*'s categorical rule.

For example, in the context of the First Amendment, the Court has recognized an exception to the rule set out in *Salerno*—that "the challenger must establish that no set of circumstances exists under which the [statute] would be valid"—for overbroad restrictions on speech.[7] *See Salerno*, 481 U.S. at 745. And this Court has permitted

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7. *Amicus* notes that there is some dispute as to whether the rule set out in *Salerno*—that "the challenger must establish that no set of circumstances exists under which the [statute] would be valid," 481 U.S. at 745—provides the correct standard for facial challenges. *See Wash. State Grange v. Wash. State Rep. Party*, 552 U.S. 442, 449 (2008) (noting criticism of *Salerno* by some members of the Court). But the *Salerno* rule is not relevant here, as it is concerned primarily with the propriety of the remedy of facial invalidation, rather than the permissibility of a facial challenge in the first place. *Salerno*, 481 U.S. at 746 (noting that the challengers presented two grounds for invalidation of the statute at issue on its face). In any particular case, a court may either give a challenged statute a narrowing construction to avoid the constitutional problem or simply decide that the facial challenge is unripe. *See Ayotte v. Planned Parenthood of New England*, 546 U.S. 320, 329 (2006) (noting that the court can "enjoin only the unconstitutional applications" of a statute or "sever its problematic portions while leaving the remainder intact") (citations omitted). *Salerno* has bite only when the facial challenge is heard and the court must decide whether *in toto* invalidation of the statute is required. The legal question of the propriety of facial challenges thus embraces several distinct inquiries. For example, facial challenges can also raise third-party standing issues. *Amicus* does not address issues relating to third-party standing because as framed by this Court's questions presented and the lower courts' decisions, Respondents' standing is not at issue. *See Morales*, 527 U.S. at 80 n.3 (Scalia, J., dissenting) (explaining that the third-party standing rule is orthogonal to the *Salerno* rule); *see also Virginia v. Hicks*, 539 U.S. 113, 120 (2003) (distinguishing standing component from merits question of whether overbreadth is "substantial").

facial challenges in non-First Amendment contexts as well. *See Sabri*, 541 U.S. at 609-10 (stating, in dicta, that overbreadth challenges are not restricted to First Amendment cases and citing, *inter alia*, *Aptheker*, 378 U.S. at 514 (right to travel facial challenge); *Stenberg*, 530 U.S. at 938-946 (invalidating partial-birth abortion statute on its face); *Flores*, 521 U.S. at 532-535 (facial challenge under § 5 of the Fourteenth Amendment)).

As Petitioner itself acknowledges, in some settings, "the dangers of facial challenges are outweighed by the practical consideration that a facial challenge is necessary to vindicate a constitutional right." Pet'r's Br. at 24 (citing *City of Lakewood*, 486 U.S. at 759). Quite simply, a facial challenge is often a better way to protect constitutional rights than requiring parties to wait until their rights have been violated and mount a series of costly as-applied challenges.[8] Facial challenges are thus often crucial to vindicate constitutional rights, and Fourth Amendment rights are no exception. Indeed, the concerns expressed by this Court in the context of First Amendment facial challenges apply equally to challenges brought pursuant to the Fourth Amendment.

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8. At the same time, facial invalidation does not usurp the legislature's role if properly cabined by familiar judicial techniques such as severance or narrowing construction. When these techniques cannot be used, courts respect the separation of powers by remanding the statute to the legislature rather than rewriting it. *Reno v. ACLU*, 521 U.S. 844, 884-85 (1997); *see also Massachusetts v. Oakes*, 491 U.S. 576, 586 (1989) (Scalia, J., concurring in part and dissenting in part). As discussed above, whether a facial challenge should be entertained is different from whether a statute should be facially invalidated.

A. Facial Challenges Guard Against Laws That Chill the Exercise of Constitutional Rights.

In the First Amendment context, the Court has recognized that as-applied challenges may not fully protect rights. For example, when a statute, even if not enforced, deters those subject to its restrictions from engaging in protected expression, it chills speech. *See Broadrick v. Oklahoma*, 413 U.S. 601, 612 (1973) ("[T]he statute's very existence may cause others not before the court to refrain from constitutionally protected . . . expression.").

As-applied challenges cannot address that chilling effect, which occurs without an official act of enforcement. Indeed, the fundamental concern is the effect of the statute on parties who are not—and who never will be—before any court. As this Court has stated, "[s]elf-censorship is immune to an 'as applied' challenge, for it derives from the individual's own actions, not an abuse of government power." *Lakewood*, 486 U.S. at 757; *see also Ashcroft v. Free Speech Coal.*, 535 U.S. 234, 244 (2002) ("With severe penalties in force, few legitimate movie producers or book publishers, or few other speakers in any capacity, would risk distributing images in or near the uncertain reach of this law.").

But the concern for chilling effects is not limited to First Amendment cases. In *Planned Parenthood of Southeastern Pennsylvania v. Casey*, 505 U.S. 833, 893 (1992), the Court invalidated a "husband notification" requirement of a state abortion statute because, given the realities of domestic violence, forced notification was "likely to prevent a significant number of women from

obtaining an abortion." *See also id.* at 897 ("Whether the prospect of notification itself deters such women from seeking abortions, or whether the husband prevents his wife from obtaining an abortion until it is too late, the notice requirement will often be tantamount to the veto [previously] found unconstitutional[.]"). The Court found the statute invalid on its face because "in a large fraction of the cases in which [it] is relevant, it will operate as a substantial obstacle to a woman's choice to undergo an abortion." *Id.* at 895.[9]

Similarly, in *Aptheker v. United States*, the Court found § 6 of the Subversive Activities Control Act unconstitutional because it prohibited the travel of all Communist Party members, even though it had only been applied to high-ranking party leaders. *Id.* at 517. The Court stated, "[t]he threat of sanctions may deter [travel by any Party member, regardless of rank] almost as potently as the actual application of sanctions." *Id.* at 516 (internal quotations and citation omitted). The dissent claimed the statute should have been upheld "[a]s applied to the prosecution of the Communist Party's

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9. *Casey* was not the first case to invalidate an abortion-related law because *most* of its applications were unconstitutional. *See Hodgson v. Minnesota*, 497 U.S. 417, 460 (1990) (O'Connor, J., concurring) (invalidating two-parent notification statute on its face because of its "broad sweep and its failure to serve the purposes asserted by the State *in too many cases*") (emphasis added); *City of Akron v. Akron Ctr. for Reprod. Health, Inc.*, 462 U.S. 416, 437-39 (1983) (invalidating on its face an ordinance requiring that second and third trimester abortions be performed in a hospital, despite the fact that such a requirement might be a valid health regulation as applied to abortions in the late second trimester or third trimester).

top dignitaries." *Id.* at 523 (Clark, J. dissenting). But the majority held that the statute's prohibition against travel "swe[pt] too widely and too indiscriminately" and was "supported only by a tenuous relationship between the bare fact of organizational membership and the activity Congress sought to proscribe." *Id.* at 514.

Statutes that violate Fourth Amendment rights result in similar chilling effects. Most obviously, searches involving protected expression raise concerns much like those in First Amendment cases. *See Marcus v. Search Warrant*, 367 U.S. 717, 729 (1961) ("The Bill of Rights was fashioned against the background of knowledge that unrestricted power of search and seizure could also be an instrument for stifling liberty of expression."); *Stanford*, 379 U.S. at 485 (noting the "closely related" nature of First and Fourth Amendment protections). For this reason, the Court has required "scrupulous exactitude" in applying Fourth Amendment requirements to such searches. *Id.*

The growth of electronic surveillance of communications and communications records has led to concern that ostensibly private communications—along with records about whom we communicate with, when, and for how long—are being surveilled. Such surveillance generates its own form of chill: reticence in private communications and adoption of (sometimes costly) precautions against surveillance. *See United States v. United States District Court (Keith)*, 407 U.S. 297, 314 (1972) ("The price of lawful public dissent must not be a dread of subjection to an unchecked surveillance power. Nor must the fear of unauthorized official eavesdropping deter vigorous citizen dissent and discussion of Government action in private conversation."). In the Internet era, chill or deterrence

will also affect individuals' choice of what to read about or search for online. One may reasonably fear that searches about certain political or religious topics may attract attention, just as use of public libraries did in the past. Unsurprisingly, as the details about the surveillance conducted by the National Security Agency has become public, a 2014 Harris poll showed that 47 percent of respondents "were thinking more carefully about what they do, what they say or where they go on the Internet in light of the spying revelations." Julian Hattem, "Many Say NSA News Changed their Behavior," *The Hill*, April 2, 2014.[10] And a Pew Research study from November 2014 found that 80 percent of adults "agree" or "strongly agree" that Americans should be concerned about government surveillance, while 61 percent of Americans felt like they "would like to do more" to protect the privacy of their personal information online. Pew Research Internet Project, "Public Perceptions of Privacy and Security in the Post-Snowden Era," November 12, 2014.[11] And indeed, the revelation of the National Security Agency's telephony metadata program has generated litigation over the First Amendment right to freedom of association. *See First Unitarian Church of Los Angeles v. NSA*, No. 13-cv-03287 (N.D. Cal., filed July 16, 2013); *ACLU v. NSA*, 959 F. Supp. 2d 724, 752 (S.D.N.Y. 2013), *appeal pending*, No. 14-42 (2d Cir., filed Jan. 2, 2014); *Klayman v. Obama*, 957 F. Supp. 2d 1 (D.D.C. 2013), *appeal pending* (D.C. Cir., filed Jan. 3, 2014).

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10. *Available at* http://thehill.com/policy/technology/202434-poll-nearly-half-say-nsa-news-affected-behaior (last visited January 23, 2015).

11. *Available at* http://www.pewinternet.org/2014/11/12/public-privacy-perceptions (last visited January 23, 2015).

Just as facial challenges are needed to address chilling effects in the context of the First Amendment, they are needed to address the chilling effects of statutes that violate the Fourth Amendment. Statutes that authorize unconstitutional searches and seizures, prompting people to think twice about how they conduct themselves online and ultimately chilling free expression, can and should be facially challenged if the law violates the requirements of the Fourth Amendment on its face.

B. Prohibiting Facial Challenges Results in Under-Enforcement of Constitutional Rights.

As-applied challenges will often be inadequate—not only because of their failure to address self-censorship and chilling effects—but because they are costly, both to affected parties and to the Constitution. In the First Amendment context, this Court has acknowledged that "[m]any persons, rather than undertake the considerable burden (and sometimes risk) of vindicating their rights through case-by-case litigation, will simply choose to abstain from protected speech[.]" *Virginia v. Hicks*, 539 U.S. at 119; *see also Lakewood*, 486 U.S. at 758 (observing that while plaintiffs litigate as-applied challenges, "opportunities for speech are irretrievably lost"). As-applied challenges are also costly as a matter of judicial resources, leading to multiple, piecemeal lawsuits involving statutes that could have been struck in a single ruling.

Just as in *Hicks* and *Lakewood*, case-by-case litigation in the warrantless search context can be expected to underproduce Fourth Amendment challenges. Courts generally review such challenges in two discrete, post-

enforcement settings: (1) motions to suppress evidence obtained as a result of the warrantless search; or (2) damages claims against the officers who conducted the search under 42 U.S.C. § 1983 or its federal counterpart. *See Bivens v. Six Unknown Named Agents of Federal Bureau of Narcotics*, 403 U.S. 388 (1971). But motions to suppress will only test the statute if someone is actually prosecuted, and many defendants have strong incentives to plea-bargain and avoid actual legal challenges. And when motions to suppress are brought, they often do not result in the exclusion of evidence—even when a constitutional violation is found to have occurred—due to the narrow application of the exclusionary rule. *See Herring v. United States*, 129 S. Ct. 695, 700 (2009) ("exclusion 'has always been our last resort, not our first impulse'") (quoting *Hudson v. Michigan*, 547 U.S. 586, 591 (2006)). Meanwhile, doctrines like qualified immunity can shield police conduct from merits review, and constitutional torts require victims of the unconstitutional search to bear substantial upfront costs simply to bring a complaint. As a result, few individuals are likely to challenge unconstitutional stop-and-frisks for lack of reasonable suspicion.

Facial Fourth Amendment challenges permit courts to assess the constitutionality of a government search or seizure without the high costs attached with these remedies. In the criminal context, facial challenges to search and seizure statutes allow courts to rule before police conduct an illegal search, which would require the application of the exclusionary rule and perhaps allows a criminal defendant to go free. In the civil context, facial challenges can similarly be brought before an unconstitutional search or seizure results in public harm, reducing costs to government entities who would otherwise be forced to defend a suit or pay damages if liable.

Moreover, this Court has already recognized two inadequacies of as-applied challenges in some Fourth Amendment contexts. First, in *Camara v. Municipal Court*, the Court found an administrative search unconstitutional, noting concern that "only by refusing entry and risking a criminal conviction can the occupant at present challenge the inspector's decision to search." 387 U.S. 523, 532 (1967). Similarly, limiting Fourth Amendment challenges to as-applied situations may require in some instances a person to violate the law and suffer the consequences in order to challenge a search or seizure statute.

Second, *Camara* was also concerned that a person subject to an administrative search "may never learn any more about the reason for the inspection than that the law generally allows housing inspectors to gain entry." *Id.* In the Fourth Amendment context, many forms of problematic electronic surveillance can easily be concealed from the surveillance targets, making it far less likely that a person being watched by the government will be on notice and thus able to challenge the surveillance. This secrecy allows the government to easily "evade[] the ordinary checks that constrain abusive law enforcement practices," specifically "community hostility" when surveillance becomes public. *Jones*, 132 S. Ct. at 956 (Sotomayor, J., concurring) (citations omitted).

Further, the intense secrecy surrounding surveillance programs in both the national security and domestic law enforcement contexts makes any meaningful review impossible. The paucity of criminal prosecutions resulting from such surveillance and the fact that the government may not reveal the use of surveillance techniques even

when it does prosecute exacerbate this concern. *Compare Clapper v. Amnesty Int'l USA*, 133 S. Ct. 1138, 1154 (2013) (arguing that barring facial standing to FISA Amendments Act (FAA) would not insulate the Act from judicial review due to availability of as-applied review in criminal proceedings), *with* Charlie Savage, *Federal Prosecutors, in a Policy Shift, Cite Warrantless Wiretaps as Evidence*, N.Y. Times (Oct. 26, 2013) (reporting that criminal defendants prosecuted using evidence derived from FAA surveillance had not previously been notified of this use).

Put another way, it is harder to conceal a physical search of a home or business than an act of electronic surveillance. After a search of her home, an innocent homeowner will know her rights have been violated and will, if she so chooses, be able to litigate the search under *Bivens* or a 42 U.S.C. § 1983 action. But an innocent person who has been subjected to electronic surveillance is unlikely to know that the surveillance occurred, making it equally unlikely that the specific instance of surveillance will be challenged. Barring all facial challenges to warrantless searches would make it even harder for those potentially subject to such surveillance to protect their rights.

C. Facial Challenges Ensure Against Abuse of Discretion.

Abuse of excessive official discretion—a concern in the First Amendment context—is also a concern for Fourth Amendment searches. For instance, the First Amendment condemns licensing statutes that "vest[] unbridled discretion in a government official," *Lakewood*, 486 U.S. at 755, because such laws "create[]

an impermissible risk of suppression of ideas[.]" *Forsyth County v. Nationalist Movement*, 505 U.S. 123, 129 (1992). The concern over excess discretion is not merely a concern for chilling speech in general, but a concern for discrimination against disfavored speech or speakers in particular. As this Court has explained, excess discretion "has the potential for becoming a means of suppressing a particular point of view." *Id.* at 130 (*quoting Heffron v. Int'l Soc'y for Krishna Consciousness*, 452 U.S. 640, 649 (1981)); *see also Thomas v. Chi. Park Dist.*, 534 U.S. 316, 323 (2002) ("Where the licensing official enjoys unduly broad discretion in determining whether to grant or deny a permit, there is a risk that he will favor or disfavor speech based on its content."). Because of the risk inherent in statutes that grant officials too much discretion, this Court requires facial invalidation in such cases, "even [when the law's] application in the case under consideration may be constitutionally unobjectionable." *Nationalist Movement*, 505 U.S. at 129.

In the Fourth Amendment search context, the concern for discretion has at least two dimensions. Absent any advance judicial review, the government would enjoy great discretion regarding (i) whom or what entities to search and (ii) the scope of the search. As this Court had observed, "bypassing a neutral predetermination of the scope of a search leaves individuals secure from Fourth Amendment violations 'only in the discretion of the [government].'" *Katz*, 389 U.S. at 358-59 (citation omitted). Indeed, the requirement of *See* upon which the court below decided the facial challenge at issue in this case—an opportunity for pre-enforcement judicial review of the inspection—was based on precisely this concern about official discretion. *See*, 387 U.S. at 545 (recognizing

the importance of a subsequent opportunity for review because "the [initial] decision to enter and inspect will not be the product of the unreviewed discretion of the enforcement officer in the field");[12] *see also Camara*, 387 U.S. at 532 (striking a conviction for refusing to comply with an ordinance authorizing warrantless housing "area" inspections for municipal code violations and observing that "[t]he practical effect of this system is to leave the occupant subject to the discretion of the official in the field").

As this Court has stated, "[t]he Constitution does not permit a legislature to 'set a net large enough to catch all possible offenders, and leave it to the courts to step inside and say who could be rightfully detained, and who should be set at large[.]'" *Morales*, 527 U.S. at 60 (quoting *United States v. Reese*, 92 U.S. 214, 221 (1876)). Legislatures may also not entrust such authority to the "moment-to-moment judgment of the policeman on his beat." *Smith v. Goguen*, 415 U.S. 566, 575 (1974) (citation omitted). Courts should not be limited to hearing as-applied challenges to statutes

12. The same concern arises in vagueness cases. In *Morales*, a plurality of the Court called for facial invalidation of criminal laws "[w]hen vagueness permeates [their] text[.]" *Morales*, 527 U.S. at 55; *see also Gentile v. State Bar of Nev.*, 501 U.S. 1030, 1051 (1991) ("The prohibition against vague regulations of speech is based in part on the need to eliminate the impermissible risk of discriminatory enforcement."). In *Gentile*, the Court emphasized that "[t]he question is not whether discriminatory enforcement occurred here, and we assume it did not, but whether the Rule is so imprecise that discriminatory enforcement is a real possibility." *Id.*; *see also City of Houston, Tex. v. Hill*, 482 U.S. 451, 459 (1987) (explaining that vague criminal statutes "that make unlawful a substantial amount of constitutionally protected conduct may be held facially invalid even if they also have legitimate application").

that violate these maxims by casting a surveillance net large enough to catch all possible offenders.

D. Facial Challenges Prevent, Not Merely Redress, Constitutional Violations.

The Constitution's framers originally intended the Fourth Amendment to serve as a shield against freestanding authority to conduct general searches. Facial challenges, which can ensure that a statute is struck before the government relies on it to effect an unconstitutional search, support this intent; they ensure the Fourth Amendment does not merely remedy constitutional violations but also prevents them in the first place.

The Establishment Clause similarly shields against certain government conduct. As such, in *Santa Fe Independent School District v. Doe*, 530 U.S. 290, 317 (2000), the Court found that a public school procedure that would give the student body power to authorize a religious message at a football game violated the First Amendment. As the Court explained, waiting to see whether student speakers in fact prayed at football games would have "threaten[ed] the imposition of coercion upon those students not desiring to participate in a religious exercise." *Id.*; *see also id.* ("Simply by establishing this school-related procedure, which entrusts the inherently nongovernmental subject of religion to a majoritarian vote, a constitutional violation has occurred. No further injury is required for the policy to fail a facial challenge.").

The Fourth Amendment, like the Establishment Clause, operates as a shield against certain government conduct—*i.e.*, unconstitutional searches. Indeed, the

Fourth Amendment is not merely a "right" against unreasonable searches, it is also a "right . . . *to be secure*" against unreasonable searches. *See* U.S. Const., amend. IV (emphasis added). The inclusion of this phrase—"to be secure"—demonstrates the Founders' intent for the Amendment to prevent, not merely redress, violations. Indeed, "[h]ad the framers sought only to safeguard a right to be 'spared,' they could have omitted the phrase 'to be secure' and drafted the Amendment to provide for a 'right against unreasonable searches and seizures.'" Luke Milligan, *The Forgotten Right To Be Secure*, 65 Hastings L.J. 713, 745–46 (2014) (noting that "[i]nterpreting 'secure' to mean [merely] 'spared'" raises the structural issue of "linguistic excess"). Indeed, the warrant clause expressly regulates the issuance of warrants, not their execution. The founding-era discourse concerning searches and seizures—"which regularly emphasized the harms attributable to the *potentiality* of unreasonable searches and seizures"—further supports that the Founders intended the Fourth Amendment to have prophylactic effect. *Id.* at 718 (emphasis in original). The very text and history of the Amendment thus calls for a protective buffer against unreasonable governmental intrusion to ensure that constitutional violations are prevented—not merely dealt with after the fact.

Permitting facial challenges to statutes that authorize unconstitutional warrantless searches is necessary to ensure that Fourth Amendment violations are prevented. As-applied challenges are simply not sufficient to prevent violations, for regardless of whether evidence obtained from unconstitutional searches conducted pursuant to the statutes is used in a criminal trial, a Fourth Amendment violation is "fully accomplished" at the time of the

search. *United States v. Verdugo-Urquidez*, 494 U.S. 259, 264 (1990) (citations omitted). Limiting challenges to case-by-case adjudication would thus fail to prevent unconstitutional searches. Because prohibiting facial challenges to statutes that authorize warrantless searches weakens the Fourth Amendment's power to act as shield, such a prohibition is in conflict with the Founders' intent.

As such, not only is a prohibition on Fourth Amendment facial challenges to statutes that authorized warrantless (as opposed to warranted) searches illogical, but it also violates fundamental constitutional principles. Facial challenges to unconstitutional statutes are necessary to protect key Fourth Amendment rights, and they should be allowed—regardless of whether a statute authorizes warranted or warrantless searches.

CONCLUSION

For the above reasons, the Court should hold that Fourth Amendment facial challenges are allowed.

Respectfully submitted,

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AMICUS CURIAE BRIEF

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IN THE

Supreme Court of the United States

CITY OF LOS ANGELES,

Petitioner,

v.

NARANJIBHAI PATEL, ET AL.,

Respondents.

On Writ of Certiorari to the United States Court of Appeals for the Ninth Circuit

BRIEF OF *AMICI CURIAE* ELECTRONIC PRIVACY INFORMATION CENTER (EPIC) AND THIRTY-SIX TECHNICAL EXPERTS AND LEGAL SCHOLARS IN SUPPORT OF RESPONDENTS

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INTEREST OF THE *AMICI CURIAE*

The Electronic Privacy Information Center (EPIC) is a public interest research center in Washington, D.C.[1] EPIC was established in 1994 to focus public attention on emerging civil liberties issues and to protect privacy, the First Amendment, and other constitutional values.

EPIC routinely participates as *amicus curiae* before this Court in cases concerning emerging privacy and civil liberties issues: *See, e.g.*, *Riley v. California*, 134 S. Ct. 2473 (2014); *Sorrell v. IMS Health Inc.*, 131 S. Ct. 2653 (2011); *Doe v. Reed*, 561 U.S. 186 (2010); *Hiibel v. Sixth Judicial Dist. Ct. of Nevada, Humboldt Cnty.*, 542 U.S. 177 (2004); *Watchtower Bible & Tract Soc'y of N.Y., Inc. v. Stratton, Ohio*, 536 U.S. 150 (2002).

EPIC believes that individuals have a constitutional right to gather at hotels for political and religious purposes without being subject to police inspection. Hotel guests also have a privacy interest in limiting the collection of their personal information by hotels. In this case, both free association and privacy interests weigh against the routine collection and suspicionless inspection of

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[1] Both parties have filed letters of consent to the filing of all *amicus* briefs with the Clerk of the Court pursuant to Rule 37.3. In accordance with Rule 37.6, the undersigned states that no monetary contributions were made for the preparation or submission of this brief, and this brief was not authored, in whole or in part, by counsel for a party.

information about hotel guests. Guest registries can reveal the political, religious, and social affiliations of people who gather at hotels to associate with others of like mind. These associations can reveal intimate personal facts, such as one's drug dependency, alcohol abuse, or depression. The personal data gathered by hotels are also at risk due to the increasing incidence of data breach and identity theft. These guest registries should not be made routinely available to the police for inspection, and they should not be collected or retained for that purpose.

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SUMMARY OF THE ARGUMENT

At issue in this case is whether a city can authorize the police to routinely inspect hotel guest registries without any individualized suspicion or judicial supervision. Los Angeles Municipal Code § 41.49 implicates not only the business practices of hotels, but also the privacy and First Amendment interests of hotel guests who frequently gather at hotels for political and religious purposes.

This Court long ago recognized that the freedom of individuals to associate with others of like mind is a core First Amendment right; the abridgment of this right occurs where the government seeks to identify people who participate in these activities. This ordinance, which grants local officials the authority to inspect guest registries of hotels in Los Angeles, directly implicates the freedom to participate in political, social, and religious associations that rely on hotels to facilitate their meetings and conferences. This Court has ruled that laws mandating disclosure of political contributions and associations must survive "exacting scrutiny." The general governmental interest in deterring criminal activity is not sufficient to justify such a broad intrusion into the associational activities of individuals who gather at hotels in Los Angeles.

ARGUMENT

In the years since this case was filed, millions of people from across the country have gathered at hotels in the Los Angeles area for political and religious purposes. For example, the National Association for the Advancement of Colored People (NAACP) brought more than 5,000 members to Los Angeles for its annual convention in July of 2011, Nat'l Ass'n for the Advancement of Colored People, *NAACP 2011 Sponsorship Opportunities Packet* 2 (2011), and those members were encouraged to stay at four hotels in the downtown Los Angeles area: the Wilshire Grand Hotel, the JW Marriott Hotel, the Luxe, and the Sheraton Downtown Los Angeles, Nat'l Ass'n for the Advancement of Colored People, *Housing Information & Schedule At-A-Glance* 4 (2011).[2] More than 4,000 attended the 2014 Annual Conference of the National Council of La Raza at the Los Angeles Convention Center in July of 2014, with attendees staying at the JW Marriott and other downtown hotels. Corin Hirsch, *Post Con: How La Raza Put On Two Shows at Once*, Convene (Sept. 2014).[3] In June 2012, more than 20,000 people attended the 2012 American Library Association's annual conference at the Anaheim Convention Center, with attendees staying at nearby hotels in

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[2] *Available at* http://naacp.3cdn.net/83832e137abdf80397_sem6ieklb.pdf.

[3] http://www.pcma.org/convene-content/convene-article/2014/09/01/post-con-how-la-raza-put-on-two-shows-at-once.

the Anaheim area. Andrew Albanese, *ALA 2012 Attendance Roughly Flat with 2011*, Publishers Wkly. (June 26, 2012).[4]

Under Los Angeles Municipal Code (LAMC) § 41.49, the names of conference attendees are retained for ninety days and made available to police for warrantless inspection. Given the significant First and Fourth Amendment interests at stake in the collection, retention, and inspection of these sensitive guest lists, this Court should affirm the judgment of the Ninth Circuit and find that LAMC § 41.49 is facially unconstitutional.

* * *

The plaintiffs in this case brought a facial challenge to LAMC § 41.49, which "permits law enforcement to demand inspection" of hotel records "at any time without consent or warrant." *Patel v. City of Los Angeles*, No. 05–1571, 2008 WL 4382755 at *2 (C.D. Cal. Sept. 5, 2008). The lower court found that the plaintiffs had standing to bring this challenge because their guest registries have been and continue to be inspected without a warrant by the police. *Id.* Therefore, the issue before this Court is whether LAMC § 41.49 is facially invalid under the Fourth Amendment because it authorizes warrantless searches of hotel guest registries.

More is at stake in this case than an individual hotel owner's interest in inspection of a particular

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[4] http://www.publishersweekly.com/pw/by-topic/digital/conferences/article/52786-ala-2012-attendance-roughly-flat-with-2011.html.

guest registry. Hotel patrons have distinct privacy and free assembly interests in their personally identifiable information that is collected and disseminated to the police. Political groups, religious organizations, and social activists regularly gather at hotels in the United States to meet, to express opinions, and to organize. The collection of guest registry information is akin to the collection of membership lists for political and religious organizations, which this Court has found implicates significant First Amendment interests. *NAACP v. Alabama ex rel Patterson*, 357 U.S. 449 (1958) [hereinafter *NAACP v. Alabama*]. Because of the constitutional interests at stake, a facial challenge is appropriate to consider the impact of this ordinance not only on the hotel owner, but on hotel guests throughout Los Angeles (and similarly situated cities). The First Amendment interests in this case trigger facial review.

The "ultimate touchstone of the Fourth Amendment is 'reasonableness,'" *Riley v. California*, 134 S. Ct. 2473, 2482 (2014) (quoting *Brigham City v. Stuart*, 547 U.S. 398, 403 (2006)), but the Court has held that "reasonableness generally requires the obtaining of a judicial warrant" before law enforcement officers can search for criminal evidence. *Id.* (quoting *Vernonia School Dist. 47J v. Acton*, 515 U.S. 646, 653 (1995)). The ordinance in this case clearly fails to satisfy the warrant requirement. But even under the more permissive balancing test employed in administrative search and special needs cases, LAMC § 41.49 unreasonably impinges on the Fourth and First Amendment rights of hotels and hotel guests.

In some "special needs" and administrative inspection cases, the Court has held that a search might be reasonable if it "balance[s] the privacy-related and law enforcement-related concerns." *Maryland v. King*, 133 S. Ct. 1958, 1970 (2013) (quoting *Illinois v. McArthur*, 531 U.S. 326, 331 (2001)). The Court has also permitted "searches for certain administrative purposes without particularized suspicion of misconduct, provided that those searches are appropriately limited." *City of Indianapolis v. Edmond*, 531 U.S. 32, 37 (2000). The warrantless searches authorized by LAMC § 41.49 are not appropriately limited or balanced against the substantial impact on the Fourth and First Amendment interests of hotels and hotel guests. Specifically, whatever impact the ordinance may have on potential criminal activity is miniscule compared to the harm caused by unmasking anonymous members of political groups.

The Fourth Amendment protects an individual's "ability to maintain a degree of public anonymity against the government" and "allows us to control how much information about our political and religious beliefs, thoughts, sensations, or emotions are disclosed." Jeffrey Rosen, *Symposium Keynote Address*, 65 Rutgers L. Rev. 965, 976 (2013). Opposition to unrestrained searches of personal information "was in fact one of the driving forces behind the Revolution itself." *Riley*, 134 S. Ct. at 2494.

Furthermore, the Constitution protects the right of individuals to be free from compelled disclosure of their associations with political, religious, and activist organizations. *See NAACP v.*

Alabama, 357 U.S. at 463. This fundamental right to associational privacy ensures that "the government may not force even a controversial group to identify its members, absent establishing a compelling state interest in disclosure." Anita L. Allen, *Associational Privacy and the First Amendment: NAACP v. Alabama, Privacy and Data Protection*, 1 Ala. C.R. & C.L.L. Rev. 1, 13 (2011). The ordinance in this case impairs the exercise of this fundamental right.

I. Guest Privacy is Critically Important for Hotels, and the Unnecessary Retention of Guest Data Increases Privacy and Data Security Risks

Privacy is of the utmost importance to hotels, as an industry association has described in a report outlining basic hotel privacy principles. *See generally* Mark G. Haley & Jungsun Kim, *Principles of Privacy: Defining & Implementing Sound Privacy Practices in Hospitality* (2d. ed. 2009).[5]

> Hoteliers have been the trustees and guardians of guest privacy since the earliest inns. Guests maintain an explicit expectation of privacy as a core component of the guest-innkeeper relationship. Guest privacy's central position in that relationship has been codified in both statutory and case law. Hotel guest privacy has been enshrined in this way for so long because hoteliers

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[5] *Available at* http://www.ahla.com/uploadedFiles/Privacy.pdf.

> are privy to innumerable details about guest preferences and behavior. There is nothing new about the privacy obligation of hoteliers and the expectation of guests.

Id. at 1. As hotels recognize, collection of guest information presents "numerous threats to privacy" including "both criminal and potentially discriminatory abuse." *Id.* at 3.

The routine police inspection of guest registries breaks the bond of trust between hoteliers and their guests, and the routine retention of guests' personal information creates significant risks of financial fraud and identity theft. A recent report addressing the use of new technologies in the hotel industry found that among hotel operators, "[p]rotecting data security and privacy represented the most important issue" related to using new technologies. Pearl Brewer, Jungsun Kim, Thomas R. Schrier & John Farrish, *Current and Future Technology Use in the Hospitality Industry* 15 (2008).[6] Any customer data that hotels collect is at risk of being stolen from that hotel's servers and used for criminal purposes. For example, in 2012 hackers stole credit card numbers and other personal information of more than 600,000 guests of Wyndham Worldwide Hotels, which resulted in "at least $10.6 million in fraudulent

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[6] *Available at* http://www.ahla.com/uploadedFiles/AHLA/Members_Only/Property_and_Corporate/Property_ _Publications/Current%20and%20Future%20Technology.pdf.

charges." Craig Timberg, *FTC Sues Wyndham Hotels Over Hacker Breaches*, Wash. Post (June 26, 2012).[7]

The Federal Trade Commission (FTC) sued Wyndham in federal court after the agency discovered that the hotel failed to adequately protect customer data. *Id.* According to the FTC's "5 key principles" of data security, one of the most important things that hotels and other companies can do to improve data security is to minimize the data that they collect about their customers and properly dispose of any data that they no longer need. Fed. Trade Comm'n, *Protecting Personal Information: A Guide for Business* 3 (2011).[8]

The need to improve data security is a national priority. According to the FTC, identity theft is the number one concern of American consumers. Press Release, Fed. Trade Comm'n, *FTC Announces Top National Consumer Complaints for 2013* (Feb. 27, 2014).[9] In 2014 alone, personal information including credit card numbers and other sensitive data about tens of millions of consumers were stolen from major retailers, including Target and The Home Depot. *See,*

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[7] http://www.washingtonpost.com/business/economy/2012/06/26/gJQATDUB5V_story.html.

[8] *Available at* http://www.ftc.gov/system/files/documents/plain-language/bus69-protecting-personal-information-guide-business_0.pdf.

[9] http://www.ftc.gov/news-events/press-releases/2014/02/ftc-announces-top-national-consumer-complaints-2013.

e.g., Julie Creswell & Nicole Perlroth, *Ex-Employees Say Home Depot Left Data Vulnerable*, N.Y. Times (Sept. 19, 2014);[10] Michael Riley et al., *Missed Alarms and 40 Million Stolen Credit Card Numbers: How Target Blew It*, Bloomberg Businessweek (Mar. 13, 2014).[11] In November 2014, hackers infiltrated computer systems at Sony Pictures Entertainment and stole "[e]verything and anything" including "contracts," "salary lists," "medical records," "social security numbers," and more. Michael Cieply & Brooks Barnes, *Sony Cyberattack, First a Nuisance, Swiftly Grew Into a Firestorm*, N.Y. Times, Dec. 30, 2014, at A1.

Section 41.49 unjustifiably exposes sensitive consumer data to the risk of data breaches and frustrates the ability of hotels to provide their guests proper data security. The ordinance forces hotels to unnecessarily retain guest registry information for ninety days, thereby increasing the likelihood that guests' personal information could be improperly obtained. Because this requirement exists only to enable routine police inspections of guest registries, *see* LAMC § 41.49(3)(a), it is imperative that this Court consider the interests of hotels and their guests in minimizing the unnecessary collection of guests' personal information. As the President recently emphasized, protecting consumer privacy is critical to our American values. "We pioneered the Internet, but

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[10] http://www.nytimes.com/2014/09/20/business/ex-employees-say-home-depot-left-data-vulnerable.html.

[11] http://www.businessweek.com/articles/2014-03-13/target-missed-alarms-in-epic-hack-of-credit-card-data.

we also pioneered the Bill of Rights, and a sense that each of us as individuals have a sphere of privacy around us that should not be breached, whether by our government, but also by commercial interests." Remarks at the Federal Trade Commission Constitution Center, 2015 Daily Comp. Pres. Doc. 22 (Jan. 12, 2015).

II. Routine Disclosure of Guest Registries to the Police Implicates Protected First Amendment Interests

The routine inspection of hotel guest registries not only threatens the business interests of hotels, it also chills activity protected by the First Amendment. Countless political, religious, and social activist organizations gather at hotels to organize and coordinate their constituents. The Los Angeles ordinance impinges upon the freedom of those who participate in these First Amendment-protected activities.

"[O]ne of the foundations of our society is the right of individuals to combine with other persons in pursuit of a common goal by lawful means." *NAACP v. Claiborne Hardware Co.*, 458 U.S. 886, 933 (1982). The exercise of this fundamental right "has traditionally been through the media of political associations." *Sweezy v. New Hampshire*, 354 U.S. 234, 250 (1957). Indeed, "Americans of all ages, all stations of life, and all types of disposition," observed the historian Alexis de Tocqueville, "are forever forming associations." Alexis de Tocqueville, *Democracy in America* 513 (J.P Mayer ed., George Lawrence trans., Anchor Books 1969) (1840). The absence of the right to free association in the

proposed federal constitution, which was recognized by several early state constitutions, arguably fueled the hesitation of several states to ratify the federal constitution. Mark D. Bauer, *Freedom of Association for College Fraternities After Christian Legal Society and Citizens United*, 39 J.C. & U.L. 247, 272 (2013). Thus, states including Virginia, North Carolina, New York, and Rhode Island proposed amendments that enumerated the people's right to free association. *The Complete Bill of Rights: The Drafts, Debates, Sources, and Origins* 140–41 (Neil H. Cogan ed., 1997). Voluntary private associations, suggested James Madison, maximized the opportunity for self-realization and stood as a bulwark against the dangers of a centralized government. David F. Epstein, *The Political Theory of the Federalist* 58–59 (1984).

The American tradition of protecting free association has necessarily underscored the importance of gathering places, and in this regard hotels have played a distinctive role. As both meeting places and lodging accommodations, hotels "brought local people together, put them into contact with strangers and outsiders, and tied them into larger networks of commerce, politics, and association." A.K. Sandoval-Strausz, *Hotel: An American History* 232 (2007). In the 1790s, national holidays were regularly marked by festive public gatherings, which commonly included parades, a reading of the Declaration of Independence, prayers, and political speeches by local activists. Jeffrey L. Pasley, *The Cheese and the Words: Popular Political Culture and Participatory Democracy in the Early American Republic*, in *Beyond the Founders: New Approaches to the Political*

History of the Early American Republic 31, 40 (Jeffrey L. Pasley et al. eds., 2004). Groups would start their gatherings in the streets and often end with festivities at hotels. *Id.* Between 1793 and 1801, more than three-quarters of civic festivals organized by Federalists were held in hotels. Simon P Newman, *Parades and the Politics of the Street: Festive Culture in the Early American Republic* 89, 220 n.18 (1997). The Founders themselves recognized the crucial role of public houses in a just democracy. Speaking to the early American tradition of small, self-governing communities, James Madison argued that a geographically-distant central government could indeed administer the vast United States but proposed expanding and improving public houses. *The Federalist* No. 14, at 97–98 (James Madison) (Clinton Rossiter ed., 1961) ("[T]he intercourse throughout the Union will be facilitated by new improvements. Roads will everywhere by shortened and kept in better order; accommodations for travelers will be multiplied and ameliorated.").

Over time associations expanded beyond their local borders and increasingly used hotels as places to gather with distant members and associates. In Cleveland, for example, the Cleveland Hotel and Kennard House, hosted trade associations like the Ohio railroad men in 1854, the Ohio Editorial Association in 1858, the American Pharmaceutical Association in 1872, and the Ohio State Dairymen's Association in 1876. Sandoval-Strausz at 245. By the start of the twentieth-century, hotel-based business conventions became so commonplace that group portraits of conferees seated at tables in hotel

ballrooms had become its own photographic subgenre. *Id.*

Hotels also attracted political activity. In 1860, the Democratic Party hosted its national convention at South Carolina's Charleston Hotel. *The Democratic Convention—Where Shall It Be Held?*, N.Y. Times, Mar. 19, 1860, at 4. The Republicans, meanwhile, held their national convention at the Tremont House hotel in Chicago. Sandoval-Strausz at 252. Hotels also hosted election victory parties, such as the one thrown by Democrats at Cleveland's American House hotel to celebrate James Buchanan's presidential victory in 1848. *Id.* at 233.

In addition to serving as venues for business and political groups, hotels were common forums for groups formed around social activism and religion. From the mid 1800s to the early 1900s, child welfare groups and the orphans in their care routinely traveled from New York to western states in search of adoptive families. The groups used hotels both for lodging accommodations and also as a staging place to meet potential adoptive parents. *Id.* at 258. *See also The Orphan Trains*, The Children's Aid Society.[12] The Presbyterian General Assembly sent more than 500 delegates to Saratoga, NY in 1890, where they "throng[ed] the corridors of hotels " *Presbyterians in Council*, N.Y. Times, May 15, 1890, at 3. Two years later, the Christian Endeavor Society convened in New York City, where more than 20,000 delegates from across the United States filled local

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[12] http://www.childrensaidsociety.org/about/history/orphan-trains (last visited Jan. 27, 2015).

hotels, with each state's delegation assigned to a particular venue. *Great Throngs Expected—Coming Council of Christian Endeavor Societies*, N.Y. Times, June 25, 1892, at 9.

The tradition of major social, political, and religious groups relying on hotels to host annual meetings and conferences continues today. Hotels in the Los Angeles area have hosted and will host members of groups that focus on the treatment of sensitive medical conditions, members of religious groups, members of political advocacy organizations, and other conventions focused on free-speech-related activities.

- Alcoholics Anonymous will host an annual AALA Roundup in May 2015, with members staying at the LA Downtown Hotel.[13]
- The American Library Association (ALA) hosted its 2012 Annual Convention at the Anaheim Convention Center, with attendees staying at hotels in the Anaheim area.[14]
- The NAACP held its 102nd Annual Convention at Los Angeles Convention Center in 2011, with attendees staying at four hotels in the downtown Los Angeles area: the Wilshire Grand Hotel, the JW Marriott Hotel, the Luxe, and the Sheraton Downtown Los Angeles.[15]

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[13] AALA, *Hotel*, http://www.aalaroundup.org/hotel.html (last visited Jan. 22, 2015).

[14] Albanese, *supra*.

[15] NAACP, *Housing Information & Schedule At-A-Glance* 4 (2011).

- The Juvenile Diabetes Research Fund (JDRF) will host TypeOneNation, an "educational and networking conference for adults and children with type 1 diabetes," in March 2015 at the Radisson in Los Angeles.[16]
- The annual Abilities Expo, the "go-to source for the [c]ommunity of people with disabilities"[17] will be held in March 2015, with participants staying at the LA Hotel Downtown and the Luxe City Center Hotel.[18]
- The National Council of La Raza, the "largest national Hispanic civil rights and advocacy organization in the United States [working] to improve opportunities for Hispanic Americans" hosted its 2014 Annual Conference at the Los Angeles Convention Center, with members staying at the JW Marriott.[19]

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[16] Juvenile Diabetes Research Foundation (JDRF), *Type One Nation Summit* (2015), http://la.jdrf.org/event/type-one-nation-summit.

[17] Abilities Expo, *Discover Earth Shaking Opportunities for the L.A. Disability Community* (2015), http://www.abilities.com/losangeles.

[18] Abilities Expo, *First-Rate Accommodations Round Out Abilities Expo* (2015), http://www.abilities.com/losangeles/hotel.html.

[19] National Council of La Raza (NCLR), *NCLR Annual Conference—Book Your Hotel* (2014), *available at* https://web.archive.org/web/20140708055849/http://www.nclr.org/index.php/events/nclr_annual_conference/book_your_hotel.

- The California Republican Party hosted their fall 2014 convention at the Los Angeles Airport Marriott in September 2014.[20]
- The AFL-CIO 2013 Convention was held at the Los Angeles Convention Center, with members staying at the Westin Bonaventure Hotel & Suites.[21]

In addition to these recent and upcoming events hosted at Los Angeles area hotels, many other prominent political organizations have gathered their members for annual events at hotels around the country each year.

- The Conservative Political Action Conference (CPAC), the nation's "largest gathering of conservatives," took place at the Gaylord Hotel at National Harbor in March 2014.[22]
- The Federalist Society held its 2014 National Lawyers Convention at The Renaissance

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[20] California Republican Party, *Hotel Reservations and Information* (2014), https://web.archive.org/web/20140708065610/http://www.cagop.org/hotel-reservations-and-information/.

[21] AFL-CIO, Convention Program 8 (2013), *available at* http://www.aflcio.org/content/download/97091/2645431/programFINAL.pdf.

[22] Rebecca Ballhaus, *CPAC 2014 Schedule Features Ted Cruz, Chris Christie*, Wall St. J. (Mar. 5, 2014), http://blogs.wsj.com/washwire/2014/03/05/cpac-2014-schedule-features-ted-cruz-chris-christie/.

Mayflower Hotel in Washington, DC in November 2014.[23]

- The American Constitution Society (ACS) held its 2014 National Convention at the Capital Hilton Hotel in Washington, DC, in June 2014.[24]
- The National Rifle Association (NRA) held its 2014 Annual Meetings & Exhibits at the Indianapolis Convention Center, with members staying in many hotels in the downtown Indianapolis area.[25]
- DEF CON hosts an annual conference of hackers, computer security researchers, and activists each summer at the Rio Hotel in Las Vegas.[26]

All of these groups are engaged in First Amendment-protected activities, but their right to

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[23] The Federalist Society, *2014 National Lawyers Convention* (2014), http://www.fed-soc.org/events/detail/2014-national-lawyers-convention.

[24] A[illegible]rican Constitution Soc'y for Law and Policy, *2014 National Convention—Frequently Asked Questions*, https://www.acslaw.org/convention/2014/FAQ (last visited Jan. 22, 2015).

[25] The Nat'l Rifle Ass'n of America, *NRA 2014—Hotel & Travel* (2014), https://web.archive.org/web/20140326135759/http://www.nraam.org/hotel-travel/hotel-travel-overview.aspx.

[26] *See, e.g.*, DEF CON Commc'ns, Inc., *DEF CON 21—Venue* (2013), https://www.defcon.org/html/defcon-21/dc-21-venue.html.

freely assemble at conventions and meetings is inhibited by LAMC § 41.49 and similar provisions that limit the ability to participate without being subject to police inspection. The inspection provision gives any law enforcement officer authority to inspect guest lists of the hotels where these groups convene, to literally take names, and to therefore create pseudo membership lists.

While the presence of these political organizations in Los Angeles at a particular moment in time is a public fact, the members of these groups have a constitutional interest in safeguarding their identities against unnecessary disclosure and a privacy interest in limiting the unnecessary collection and retention of their personal information by hotels. These interests outweigh the government's speculative interest in inspecting guest registries. And it is no answer that the constitutional impact is diminished simply because hotel guests at political conferences may not be aware that the police are routinely inspecting their hotel records.

III. The Court Has Found That Laws Inhibiting the Freedom of Political, Religious, and Social Organizations Must Survive Exacting Scrutiny

This Court has made clear that individuals "have a right to privacy of belief and association." *Doe v. Reed*, 561 U.S. 186, 206 (2010). In recognition of this right, the Court has overturned provisions that required individuals to reveal their identities to participate in political and religious activities. *See, e.g., Watchtower Bible and Tract Soc'y of N.Y., Inc. v. Village of Stratton*, 536 U.S. 150, 166 (2002); *Buckley*

v. American Constitutional Law Found., Inc., 525 U.S. 182, 199 (1999); *McIntyre v. Ohio Elections Comm'n*, 514 U.S. 334, 341 (1995); *Brown v. Socialist Workers '74 Campaign Comm. (Ohio)*, 459 U.S. 87, 91 (1982); *Gibson v. Florida Legislative Investigation Comm.*, 372 U.S. 539, 544 (1963); *NAACP v. Alabama*, 357 U.S. at 462.

The Court "has long recognized the 'vital relationship between' political association 'and privacy in one's associations.'" *Doe v. Reed*, 561 U.S. at 232 (Thomas, J., dissenting) (citing *NAACP v. Alabama*, 357 U.S. at 462). The Court has also found that anonymity serves many important purposes, and that "[t]he decision in favor of anonymity may be motivated by fear of economic or official retaliation, by concern about social ostracism, or merely by a desire to preserve as much of one's privacy as possible." *McIntyre*, 514 U.S. at 341–42.

A law purporting to compel disclosure of associational information is subject to "exacting scrutiny." *Doe v. Reed*, 561 U.S. at 196. This standard requires a "substantial relation" between the disclosure requirement and "an overriding and compelling state interest" *Id.* at 232 (citing *Brown*, 458 U.S. at 91). The government regulation must also be "tailored to" the state's interest. *Watchtower*, 536 U.S. at 165–68. The standard applies "even if any deterrent effect on the exercise of First Amendment rights arises, not through direct government action, but indirectly as an unintended but inevitable result of the government's conduct in requiring disclosure." *Buckley v. Valeo*, 424 U.S. 1, 65 (1976) (citing *NAACP v. Alabama*, 357 U.S. at 461).

The Court first articulated the right to associational privacy in *NAACP v. Alabama*, where it held unanimously that a state law requiring the local chapter of the NAACP to disclose names and addresses of all members violated the members' rights of speech and assembly. 357 U.S. at 463. In *NAACP*, state officials demanded membership information as part of a suit against the group for allegedly violating a state law requiring registration of foreign corporations. *Id.* at 451. The NAACP agreed to disclose the names of its officers, but argued that mandatory disclosure of rank-and-file members violated the members' First Amendment right of "lawful association in support of their common beliefs." *Id.* at 460.

The Court noted that "[i]t is beyond debate that freedom to engage in association for the advancement of beliefs and ideas is an inseparable aspect of the 'liberty' assured by the Due Process Clause of the Fourteenth Amendment, which embraces freedom of speech." *Id.* at 460. And because the compelled disclosure would have exposed NAACP's members to economic and physical reprisal, the law was

> likely to affect adversely the ability of petitioner and its members to pursue their collective effort to foster beliefs which they admittedly have the right to advocate, in that it may induce members to withdraw from the [NAACP] and dissuade others from joining it because of fear of exposure of their beliefs shown

> through their associations and of the consequences of this exposure."

Id. at 462–63. The Court found that the state's interest in disclosure must be "compelling" to justify the deterrent effect that disclosure would have on the members' right to association. *Id* at 463. But because Alabama's interest in enforcing the state business statute had no "substantial bearing" on disclosure of the NAACP's members, the state had "fallen short of showing a controlling justification for the deterrent effect on the free enjoyment of the right to associate which disclosure of membership lists is likely to have." *Id.* at 464–65.

Hotel patrons in Los Angeles face the persistent specter of governmental inquiry into their associational ties. By mandating the collection of guest registry information and providing the police with the authority to inspect registries without warrant or restriction, LAMC § 41.49 provides the mechanism to identify participants in political, social, and religious conferences, and threatens to chill these associational freedoms. "Awareness that the Government may be watching chills associational and expressive freedoms." *United States v. Jones*, 132 S. Ct. 945, 956 (2012) (Sotomayor, J., concurring). The Fourth and First Amendments require greater protections against inspection by law enforcement when such important rights are at stake. After all, "the Founders did not fight a revolution to gain the right to government agency protocols," which is why the Fourth Amendment typically requires judicial supervision to conduct a search. *Riley v. California*, 134 S. Ct. 2473, 2491 (2014). For those "extensive

intrusions that significantly jeopardize [individuals'] sense of security more than self-restraint by law enforcement officials is required." *Smith v. Maryland*, 442 U.S. 735, 751 (1979) (Marshall, J., dissenting) (quoting *United States v. White*, 401 U.S. 745, 786 (1971) (Harlan, J., dissenting)).

IV. A Facial Challenge Is the Proper Vehicle to Evaluate This Ordinance Because It Implicates the Interests of Hotel Patrons

This matter comes before the Court on a facial challenge to the constitutionality of LAMC § 41.49. Such a challenge is rare in the Fourth Amendment context, but it is appropriate in this case to consider the validity of the ordinance on its face because, as the City described, the purpose of the regulation is not to gather evidence but to "discourage" the use of hotels and motels by certain patrons. L.A., Cal., Ordinance 17796 (Oct. 6, 2006). Specifically, the ordinance was intended to discourage the use of hotels by individuals who wish to preserve their anonymity or otherwise limit the disclosure of their personal information to the police through random inspection. This implicates the associational privacy of those guests engaged in First Amendment-protected activities who may wish to preserve their anonymity and may also deter participation in political gatherings where anonymity is an important or necessary element.

The Court has held that forcing individuals to identify themselves can have a chilling effect on political activities and associational freedoms. *See Buckley v. Am. Constitutional Law Found., Inc.*, 525 U.S. 182, 212 (1999). Compelled disclosure can

"burden the ability to speak" and "seriously infringe on privacy of association and belief guaranteed by the First Amendment." *Doe v. Reed*, 561 U.S. 186, 203 (2010) (Alito, J., concurring) (citing *Citizens United v. FEC*, 558 U.S. 310, 366 (2010) and *Buckley v. Am. Constitutional Law Found., Inc.*, 525 U.S. at 64).

The interest of individuals to be free from such compelled disclosure is significant, and is distinct from the requirement that any particular individual establish injury-in-fact in order to satisfy Article III standing requirements. *See Clapper v. Amnesty Int'l, USA*, 133 S. Ct. 1138, 1152–53 (2013). Unlike the plaintiffs in *Clapper*, the plaintiffs in this case have established that they have suffered an injury-in-fact under the Fourth Amendment—the inspection of their guest registries by the police. *See Patel v. City of Los Angeles*, No. 05-1571, 2008 WL 4382755 at *2 (C.D. Cal. Sept. 5, 2008) ("Plaintiffs have been subject to and continue to be subject to searches and seizures of motel registration records by the Los Angeles Police Department without consent or warrant pursuant to LAMC § 41.49, which permits law enforcement to demand inspection of motel registers at any time without consent or warrant.") (emphasis added).

Given the nature of the challenge and of LAMC § 41.49, it is appropriate for the Court to consider not only the interests of the government and the interests of the plaintiffs, but also the interests of hotel patrons in Los Angeles. As the Court recognized in *Doe v. Reed*, a facial challenge is an appropriate mechanism to evaluate a state regulation authorizing the disclosure of names and other personal information. The plaintiffs in *Doe* sought an

injunction barring the secretary of state "from making referendum petitions available to the public." *Doe v. Reed*, 561 U.S. at 194. The Court recognized that while the complaint did not seek to strike down the Washington Public Records Act (PRA) "in all its applications," it was a facial challenge in the sense that it was "not limited to plaintiffs' particular case, but challeng[ed] the application more broadly to all referendum petitions." *Id.* The plaintiffs in *Doe* argued that disclosure of their names and contact information under the PRA, which they were required to submit in order to sign a state referendum petition, was a violation of the First Amendment. *Id.* at 190–94.

As the Court explained in *Doe*, a facial challenge considers not only the harm that would be suffered by the individual plaintiffs, but also the harm that would be suffered by others subject to the government regulation. *See Doe v. Reed*, 561 U.S. at 200 ("The question before us, however, is not whether PRA disclosure violates the First Amendment with respect to those who signed the R-71 petition, or other particularly controversial petitions. The question instead is whether such disclosure in general violates the First Amendment rights of those who sign referendum petitions."). For this reason, a facial challenge is particularly appropriate where a law "'on its face impose[s] a severe burden,'—compelled disclosure of privacy in political association protected by the First Amendment." *Doe v. Reed*, 561 U.S. at 230–31 (Thomas, J., dissenting) (quoting *Wash. State Grange v. Wash. State Republican Party*, 552 U.S. 442, 450 (2008)).

The mandated retention of personal information about guests and routine police inspection of hotel guest registries implicates the privacy and constitutional interests of hotel guests throughout the Los Angeles area. A facial challenge to the practice is appropriate and the ordinance should be overturned because it authorizes searches that are unreasonable under the Fourth Amendment. The "fact that technology has made it easier to collect, store, and share data revealing individuals' group memberships" should not diminish this Court's protection of these constitutional rights. Anita L. Allen, *Associational Privacy and the First Amendment: NAACP v. Alabama, Privacy and Data Protection*, 1 Ala. C.R. & C.L.L. Rev. 1, 13 (2011). As the Court recognized in *NAACP v. Alabama*, the "close ties between the right of privacy, political association, and social change" underscore the importance of protecting the anonymity of individuals' private associations. Marc Rotenberg, *Technology and Privacy: Old Problems and New Challenges*, 34 Hum. Rts. (2007).

CONCLUSION

For the foregoing reasons, *amicus* respectfully ask this Court to affirm the decision of the Ninth Circuit below.

Respectfully submitted,

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January 30, 2015

AMICUS CURIAE BRIEF

No. 13-1175

In the Supreme Court of the United States

CITY OF LOS ANGELES, CALIFORNIA, PETITIONER

v.

NARANJIBHAI PATEL, ET AL.

ON WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE NINTH CIRCUIT

BRIEF FOR GOOGLE INC. AS AMICUS CURIAE SUPPORTING RESPONDENTS

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In the Supreme Court of the United States

No. 13-1175

CITY OF LOS ANGELES, CALIFORNIA, PETITIONER

v.

NARANJIBHAI PATEL, ET AL.

ON WRIT OF CERTIORARI
TO THE UNITED STATES COURT OF APPEALS
FOR THE NINTH CIRCUIT

BRIEF FOR GOOGLE INC. AS AMICUS CURIAE SUPPORTING RESPONDENTS

INTEREST OF AMICUS CURIAE*

Google Inc. is a diversified technology company whose mission is to organize the world's information and make it universally accessible and useful. Google

* No counsel for a party authored this brief in whole or in part, and no person other than amicus or its counsel has made a monetary contribution intended to fund the preparation or submission of the brief. The parties have entered blanket consents to the filing of amicus briefs, and copies of their letters of consent are on file with the Clerk.

offers a variety of web-based products and services—including Search, Gmail, Google+, Maps, YouTube, and Blogger—that are used by people throughout the United States and around the world.

This case concerns the circumstances under which the government can compel a commercial entity to collect and retain personal information about its customers and turn that information over to police without an opportunity for pre-enforcement judicial review. Like most Internet-based service providers, Google collects information about its customers in order to offer its services. Google has a strong interest in protecting its customers' privacy and in preserving its ability to challenge unlawful government requests for information. Under the reasoning advanced by petitioner, the government could rely on a combination of the third-party doctrine and the administrative-search doctrine to compel a business—including, perhaps, an Internet-based service provider—to collect and retain information from its customers and then produce it without any opportunity for pre-compliance judicial review or notice to the affected customers. While this Court has approved administrative searches in a narrow class of cases, the Court should reject petitioner's reasoning, which would permit a scheme of broad-ranging warrantless searches to survive constitutional scrutiny based on little more than the government's interest in identifying the few users of a regulated service who might be engaged in criminal activity. Google files this brief to defend its users and to protect its own privacy rights in the information it collects by preserving its ability to oppose warrantless searches of its records.

SUMMARY OF ARGUMENT

This case involves a Los Angeles ordinance that requires hotel operators to collect personal information about their customers and to produce that information to the police upon request, without a warrant or any other opportunity for pre-execution judicial review. L.A., Cal., Mun. Code (LAMC) § 41.49 (2008). The court of appeals correctly held that the statute violates the Fourth Amendment.

The compelled disclosure of business records containing customers' personal information is a "search" under the Fourth Amendment because it interferes with constitutionally protected privacy interests of businesses and their customers. Accordingly, the warrant requirement applies unless the search qualifies for one of the Court's specifically delineated exceptions. Petitioner argues that Section 41.49 can be upheld under *New York* v. *Burger*, 482 U.S. 691 (1987), in which this Court held that a warrantless inspection scheme may be permissible in certain closely regulated industries. That is incorrect.

The *Burger* exception to the warrant requirement applies only to industries that are subject to such intensive regulation that businesses operating in those industries have a diminished expectation of privacy. Although petitioner identifies a hodgepodge of regulations governing hotels, it has not shown anything comparable to the kinds of regulations at issue in the cases in which this Court has upheld warrantless searches. Accepting petitioner's position would require a significant expansion of *Burger* that could affect many other industries. Internet and telecommunications services, for example, are also subject to

broad regulation, but that in no way diminishes the privacy interests of users of those services.

Nor can petitioner show that hotels lack an expectation of privacy in their customers' personal information. Petitioner denigrates that privacy interest, arguing that the information at issue is about the customers, not the hotels. But petitioner fails to appreciate that a business has a significant—and constitutionally protected—interest in protecting the privacy of information entrusted to it by its customers. Users of Google's services, for example, have their own privacy interests, but Google itself has a privacy interest in information about the identity of its users collected through registration for its services.

Even if *Burger* were applicable here, the searches conducted under Section 41.49 are unreasonable because they do not further any regulatory interest but instead serve only the general interest in crime control. In addition, petitioner has failed to show that warrantless searches are necessary to further the regulatory regime, and the administrative scheme of which they are a part does not include constitutionally adequate limits on officers' exercise of discretion in the field.

Finally, petitioner argues that facial challenges are impermissible in the Fourth Amendment context. But while facial challenges are disfavored, this Court has never held that they are categorically forbidden under the Fourth Amendment, and it should not do so here. Statutes like Section 41.49 cause an immediate, concrete injury to the businesses that are subject to them because they undermine customers' expectation that their personal information will be secure from disclo-

sure. The Court should not eliminate the ability of businesses to bring facial challenges against such statutes in appropriate circumstances.

ARGUMENT

A. Inspections under Section 41.49 are searches that are subject to the Fourth Amendment

Petitioner does not question that the inspections authorized by Section 41.49 constitute searches under the Fourth Amendment, and with good reason. The Fourth Amendment protects the right of the people to be secure in their "persons, houses, papers, and effects, against unreasonable searches and seizures." U.S. Const. Amend. IV. Under the Fourth Amendment, a "search" takes place "when government officers violate a person's 'reasonable expectation of privacy'" or when the government engages in a physical trespass upon the areas enumerated in the Amendment in order to obtain information. *United States* v. *Jones*, 132 S. Ct. 945, 950 (2012) (quoting *Katz* v. *United States*, 389 U.S. 347, 360 (1967) (Harlan, J., concurring)). The Ninth Circuit panel suggested (Pet. App. 39-44) that inspections under Section 41.49 do not infringe either a reasonable expectation of privacy or a possessory interest on the part of hotel owners, but that is incorrect.

Recognizing that the owner of a business, "like the occupant of a residence, has a constitutional right to go about his business free from unreasonable official entries upon his private commercial property," this Court has held that businesses have a reasonable expectation of privacy in both their premises and their business records. *See* v. *City of Seattle*, 387 U.S. 541,

543 (1967); see *Dow Chem. Co.* v. *United States*, 476 U.S. 227, 236 (1986) ("Dow plainly has a reasonable, legitimate, and objective expectation of privacy within the interior of its covered buildings, and it is equally clear that expectation is one society is prepared to observe."); *Hale* v. *Henkel*, 201 U.S. 43, 76 (1906) (holding that an order for production of corporate papers constituted an unreasonable search). An entry on a hotel's premises to inspect a hotel's records of customer information infringes both of those interests.

In addition, a non-consensual inspection of hotel guest records is a common-law trespass. That is so whether the inspection involves flipping pages in a book, requiring a hotel operator to enter his credentials and log in to a password-protected computer, or simply turning a computer screen to view it from the other side of a desk. See Restatement (Second) of Torts § 217, at 417 (1965) (defining trespass to chattel as "intentionally * * * intermeddling with a chattel in the possession of another"); cf. *Arizona* v. *Hicks*, 480 U.S. 321, 324-325 (1987) (lifting turntable to examine serial numbers on bottom constitutes a search). Because hotel operators have a possessory interest in their business records, and an inspection under Section 41.49 trespasses upon that interest, the inspection constitutes a "search."

B. The Fourth Amendment generally requires pre-execution judicial review of searches like those conducted under Section 41.49

Petitioner argues that warrantless searches conducted under Section 41.49 comport with the Fourth Amendment because they are part of a "reasonable

administrative inspection scheme." Pet. Br. 29 (capitalization omitted); accord U.S. Br. 25. The asserted reasonableness of the searches, however, is not sufficient to make the searches consistent with the Fourth Amendment. This Court has adopted a presumption that searches must be authorized by warrants, and a warrantless search can be constitutional "only if it falls within a specific exception to the warrant requirement." *Riley* v. *California*, 134 S. Ct. 2473, 2482 (2014). The Court has applied the warrant requirement in the context of administrative searches of businesses such as those at issue here. *Camara* v. *Municipal Court*, 387 U.S. 523, 534 (1967); *See*, 387 U.S. at 546.

In *See*, the Court recognized an exception to the warrant requirement for administrative searches conducted under a scheme that limits the "discretion of the enforcement officer in the field" and that provides the target of the search with an opportunity to "obtain judicial review of the reasonableness of the demand prior to suffering penalties for refusing to comply." 387 U.S. at 545. Section 41.49 satisfies neither of those requirements. It requires that the hotel's guest records be "made available to *any* officer of the Los Angeles Police Department for inspection" without specifying any limits on which officers may demand to see the records, let alone how often they may do so and for what purpose. LAMC § 41.49(3)(a) (emphasis added). And the statute provides no opportunity for pre-execution judicial review. Compare LAMC § 41.49(3)(a), with *See*, 387 U.S. at 545 ("[T]he subpoenaed party may obtain judicial review of the reasona-

bleness of the demand prior to suffering penalties for refusing to comply.").

Recognizing that the searches here cannot be defended under *See*, petitioner relies instead on this Court's decision in *Burger*, which permitted an exception to the warrant requirement for situations of "'special need'" in "closely regulated" industries where "the privacy interests of the owner are weakened and the government interests in regulating particular businesses are concomitantly heightened." 482 U.S. at 702 (quoting *New Jersey* v. *T.L.O.*, 469 U.S. 325, 353 (1985) (Blackmun, J., concurring in the judgment)). Even in that context, a warrantless search is reasonable only if it meets three criteria: (1) "there must be a 'substantial' government interest that informs the regulatory scheme pursuant to which the inspection is made"; (2) "warrantless inspections must be 'necessary to further [the] regulatory scheme'"; and (3) the statutory scheme, "'in terms of the certainty and regularity of its application, [must] provid[e] a constitutionally adequate substitute for a warrant.'" *Id.* at 702-703 (quoting *Donovan* v. *Dewey*, 452 U.S. 594, 600, 603 (1981)) (brackets in original).

As shown below, *Burger*'s threshold requirement of a "closely regulated industry" is not satisfied here, but even if it were, the searches at issue would not be consistent with *Burger*.

C. The *Burger* exception for "closely regulated" industries is inapplicable here

Petitioner argues (Pet. Br. 31-36) that the hotel industry in Los Angeles is "closely regulated" for purposes of *Burger*. That is incorrect. Hotels have none

of the features that characterize the other industries this Court has described as "closely regulated," and extending *Burger* to them would weaken Fourth Amendment protections for a wide range of businesses.

1. This Court has identified only a few industries that are sufficiently pervasively regulated that businesses operating in them may be subjected to warrantless search regimes. The common feature of those industries is that they have "such a history of government oversight that no reasonable expectation of privacy could exist for a proprietor over the stock of such an enterprise." *Marshall* v. *Barlow's, Inc.*, 436 U.S. 307, 313 (1978) (citation omitted). As the Court explained in *Burger*, "the doctrine is essentially defined by 'the pervasiveness and regularity of the federal regulation' and the effect of such regulation upon an owner's expectation of privacy." 482 U.S. at 701 (quoting *Dewey*, 452 U.S. at 606).

"[T]he closely regulated industry of the type" at issue in those cases, the Court has explained, "is the exception," not the rule. *Barlow's*, 436 U.S. at 313; see *Huber* v. *New Jersey Dep't of Envtl. Prot.*, 131 S. Ct. 1308, 1308 (2011) (Alito, J., respecting the denial of certiorari) (describing *Burger* as "a limited exception to the Fourth Amendment's warrant requirement"). Indeed, this Court has identified only four types of businesses that qualify: licensed vendors of alcoholic beverages, *Colonnade Catering Corp.* v. *United States*, 397 U.S. 72 (1970); licensed firearms dealers, *United States* v. *Biswell*, 406 U.S. 311 (1972); mines and quarries, *Dewey*, *supra*; and automobile junkyards, *Burger*, *supra*. Each of those businesses poses

a potential danger to the public. See, *e.g.*, *Burger*, 482 U.S. at 709 ("Automobile junkyards and vehicle dismantlers provide the major market for stolen vehicles and vehicle parts."); *Dewey*, 452 U.S. at 602 (describing the mining industry as "among the most hazardous in the country"). More importantly, the pattern of regulation in each industry is such that a business could not reasonably expect privacy in its facilities or its records. See, *e.g.*, *Biswell*, 406 U.S. at 316 ("When a dealer chooses to engage in this pervasively regulated business and to accept a federal license, he does so with the knowledge that his business records, firearms, and ammunition will be subject to effective inspection.").

The Court has emphasized the narrowness of the exception by holding that simply being subject to the Occupational Safety and Health Act of 1970, 29 U.S.C. 651 *et seq.*—as most workplaces are—is not sufficient. *Barlow's*, 436 U.S. at 313-314. The "closely regulated" industries doctrine thus does not extend to businesses merely because they are subject to general economic or social legislation.

2. While hotels are subject to some regulations, petitioner has not come close to showing that the hotel industry resembles the industries that this Court has held to be subject to *Burger*. In arguing that hotels are closely regulated, petitioner relies principally (Pet. Br. 32) on Section 41.49 itself, noting that it requires hotels to record information and make it available to the police, that it carries penalties for violations, and that it informs hotels that the required records will be subject to periodic inspections. That argument, of course, is entirely circular. The same reasoning would

apply equally to any statute prescribing warrantless inspections, and it would make such a statute self-justifying. This Court has never accepted the existence of such a statute, by itself, as evidence that an industry is closely regulated.

Nor does the mandatory recording of the information do anything to diminish the hotel's privacy interest. Respondents have not challenged the provision of the statute that requires them to collect customer information. But requiring that a business collect and retain information from its customers does not make that information government property or otherwise interfere with a business's possessory interest in its own records. A contrary rule would mean that the government could circumvent the Fourth Amendment with respect to information a business already collects for its own purposes by mandating that it collect that information on behalf of the government. See, *e.g.*, *McLaughlin* v. *Kings Island*, 849 F.2d 990, 995 (6th Cir. 1988) ("[T]he concept of 'required records' is not synonymous with the absence of a privacy interest."); *Brock* v. *Emerson Elec. Co.*, 834 F.2d 994, 996 (11th Cir. 1987) (concluding that a business had a privacy interest in records that OSHA required it to compile).

Petitioner observes (Pet. Br. 32) that hotels must have a license and must display a registration certificate on the premises. But in Los Angeles, as in many other places, the same is true of all businesses. See LAMC § 21.09(a) (requiring that all entities doing business in Los Angeles obtain a Business Tax Registration Certificate, which must be "posted in a conspicuous place upon the premises at or from which the

business is conducted"). Petitioner does identify (Pet. Br. 33-34) a few regulatory requirements that appear to be hotel-specific. But many of them are health regulations—for example, the requirement that bed linens be changed between guests—that are similar to those imposed on other businesses. See, *e.g.*, Cal. Health & Safety Code § 114095 (West 2012) (cleaning requirements for restaurant utensils); Cal. Code Regs. tit. 16, § 979 (disinfection requirements for equipment used by cosmetologists). And the others—for example, the obligation not to refuse a guest without cause, and the prohibition on charging more than the posted rate—are characteristic of regulations imposed on public utilities, common carriers, and other places of public accommodation. See, *e.g.*, Cal. Civ. Code § 51(b) (West 2007 & Supp. 2015) (imposing nondiscrimination obligations on "all business establishments of every kind whatsoever"); Cal. Pub. Util. Code § 489(a) (West 2004) (requiring public utilities to file tariffs with the California Public Utilities Commission). If such general regulations were sufficient to invoke *Burger*, it is difficult to see what type of business would not qualify. See *Barlow's*, 436 U.S. at 314.

3. Significantly, none of the regulations identified by petitioner has any direct relationship to the information covered by Section 41.49. That is, the fact that hotels are subject to health regulations and obligations not to turn away customers does nothing to reduce a hotel owner's expectation of privacy in the sensitive customer information at issue here.

The hotel guest records required by Section 41.49 include guests' names and home addresses, as well as the names of anyone with whom a guest will be shar-

ing a hotel room. LAMC § 41.49(1). The records may also include license plate numbers, car make and model information, payment details, and individuals' driver's license or other identification numbers and expiration dates. *Ibid.*; LAMC § 41.49(4). That information is far more sensitive than that at issue in this Court's other cases involving closely regulated industries. The statute in *Burger*, for example, required junkyards to maintain records of vehicles and parts of vehicles coming into their possession, but it did not require them to collect or produce customer information like that at issue here. 482 U.S. at 694 n.1. In any event, information about vehicle sales is less likely to be regarded as private than information about where, when—and with whom—one has stayed at a hotel.

Businesses typically do not freely disclose sensitive, personally identifiable information about their customers to the general public. Customer personal information is a valuable, competitively sensitive resource that can help a business understand its customers and tailor services to their needs. Making that information available to the public would diminish its value and allow competitors to entice customers away from a business.

More importantly, the privacy of such information is important to a business's customers, and a business has an interest in protecting that information in order to retain the trust of its customers. That interest is "one that society is prepared to recognize as 'reasonable.'" *Katz*, 389 U.S. at 361 (Harlan, J., concurring). Many commercial entities promise to limit disclosures of their customers' private information. See, *e.g.*,

Google Inc., *Privacy Policy*, http://www.google.com/policies/privacy/ (last visited Jan. 29, 2015) (explaining that "[w]e do not share personal information with companies, organizations and individuals outside of Google" except in certain enumerated circumstances). Indeed, in many circumstances, the law *requires* that a business safeguard customer information from disclosure and that it comply with representations it has made about the purposes for which such information will be collected, used, stored, or shared.

Both state and federal law reflect an understanding that personal information of the kind that hotels are required to collect under Section 41.49 is private and not to be disclosed to the general public. For example, California, like nearly every other State, requires that commercial entities provide notice to individuals in the event that a third party obtains unauthorized access to individuals' personal information. Cal. Civ. Code § 1798.82 (West 2009 & Supp. 2015). The definition of personal information includes a person's name when combined with driver's license information, which is information that Section 41.49 requires that hotels collect from some of their guests. Cal. Civ. Code § 1798.82(h)(1)(B) (West 2009 & Supp. 2015); cf. Driver's Privacy Protection Act of 1994, 18 U.S.C. 2721 *et seq.* (recognizing the privacy interest in driver's license information).

Similarly, federal law requires that businesses protect customers' personal information from unauthorized disclosure and that they comply with representations they have made to consumers about how they will use that personal information. In an assertion of its statutory authority to prohibit deceptive and unfair

trade practices, the Federal Trade Commission has brought more than 50 cases against companies that were alleged to have engaged in practices that put consumers' personal information at risk. Federal Trade Commission, *2014 Privacy and Data Security Update*, http://tinyurl.com/FTC-update; see 15 U.S.C. 45. The FTC has brought such an action against a hotel chain that it said had engaged in unfair and deceptive practices by allegedly failing to maintain reasonable and appropriate security for its guests' sensitive personal information, which included "names, addresses, email addresses, telephone numbers, payment card account numbers, expiration dates, and security codes." First Amended Complaint at 7, *FTC* v. *Wyndham Worldwide Corp.*, Dkt. No. 28, 2:12-cv-01365-PGR (D. Ariz. Aug. 9, 2012).

4. Both petitioner and the United States fail to appreciate a hotel's interest in protecting its customers' information from unwarranted government inspection. As the United States puts it (U.S. Br. 29), hotels "have little privacy interest in the required information" because "[g]uests themselves have no reasonable expectation of privacy in the information recorded by the hotel operator." That reasoning relies on the third-party doctrine, which assumes that a person has no Fourth Amendment protected interest in information exposed to a third party. *Smith* v. *Maryland*, 442 U.S. 735, 743-744 (1979); *United States* v. *Miller*, 425 U.S. 435, 442-443 (1976). As Justice Sotomayor has suggested, however, that interpretation of the Fourth Amendment should be reconsidered because in government surveillance cases it "is ill suited to the digital age, in which people reveal a great deal of infor-

mation about themselves to third parties in the course of carrying out mundane tasks." *Jones*, 132 S. Ct. at 957 (Sotomayor, J., concurring); see *ibid.* (expressing "doubt that people would accept without complaint the warrantless disclosure to the Government of a list of every Web site they had visited in the last week, or month, or year").

But even if guests lack a constitutionally protected privacy interest in information they have been compelled to disclose to a hotel, it does not follow, as petitioner argues, that the *hotel* lacks such an interest. Pet. Br. 52 ("A register of guests' names, addresses, and home license plate numbers is not highly personal information *about the hotel*."). To the contrary, if guests are unable to assert their own privacy interests, that serves to heighten the hotel's interest because only the hotel has the ability to bring a legal challenge to protect the information from government intrusion.

The implications of petitioner's reasoning are sweeping. Under petitioner's theory, if the government wishes to collect sensitive information about the customers of a business, it need only compel the business to collect that information from the customers. Then, as a result of the third-party doctrine, the customers will cease to have a reasonable expectation of privacy in that information; and according to petitioner, the business will have no privacy interest in that information either. The government could use that analysis to justify warrantless collection of information from the customers of many types of businesses, including electronic communications service providers. Criminals may use email to facilitate crimes

just as people may use hotels to engage in prostitution, but both Google and its users have an interest in protecting the identify of users of the service (and Google would also argue against compelled registration of email users).

Neither the courts nor Congress have accepted petitioner's reasoning. See Electronic Communications Privacy Act of 1986, Pub. L. No. 99-508, 100 Stat. 1848 (prohibiting providers from disclosing certain customer communications and records to law enforcement, except when the disclosure is authorized by a subpoena, a court order, or a warrant). A business's interest in protecting its customer information is appropriately viewed as a privacy interest, and it is one that can be invoked by a business to oppose a search of that information. In the circumstances of this case, that interest is significant, and it is undiminished by the regulations that petitioner and the United States have identified. The *Burger* exception to the requirement of pre-execution judicial review is inapplicable here.

D. Searches conducted under Section 41.49 are not consistent with *Burger*

1. Even in a closely regulated industry, *Burger* allows a regime of warrantless searches only when "there [is] a substantial government interest that informs the regulatory scheme pursuant to which the inspection is made." 482 U.S. at 702 (internal quotation marks omitted). That interest must be a "special need[]" that is something other than "the normal need for law enforcement." *Ashcroft* v. *al-Kidd*, 131 S. Ct. 2074, 2081 (2011) (quoting *Vernonia Sch. Dist. 47J* v. *Acton*, 515 U.S. 646, 653 (1995)); see *Skinner* v. *Rail-*

way Labor Execs. Ass'n, 489 U.S. 602, 619-620 (1989) (identifying *Burger* as an example of a special-needs case). As the Court explained in *Ferguson* v. *City of Charleston*, the Court in *Burger* "relied on the 'plain administrative purposes' of the scheme to reject the contention that the statute was in fact 'designed to gather evidence to enable convictions under the penal laws,'" and it upheld the inspection scheme only because "[t]he discovery of evidence of other violations would have been merely incidental to the purposes of the administrative search." 532 U.S. 67, 83 n.21 (2001) (quoting *Burger*, 482 U.S. at 715).

The principal government interest cited by petitioner (Pet. Br. 37) is that of ensuring that hotel operators maintain registers that accurately identify their guests in order to deter criminal activities that allegedly proliferate in an environment of anonymity. That is simply a law-enforcement interest under another name. The desire to eliminate anonymity does not give rise to a legitimate interest in coopting commercial businesses to operate as recordkeepers for future law enforcement investigations. Other industries and services, including telecommunications and Internet services, enable anonymous commercial activity. Some users exploit that anonymity for criminal purposes; the vast majority use it for legitimate, socially valuable purposes. See *McIntyre* v. *Ohio Elections Comm'n*, 514 U.S. 334, 357 (1995) (discussing the value of anonymous speech). At all events, the supposed government interest in eliminating anonymity would not justify a scheme of warrantless searches of Internet businesses, and it can no more justify the scheme at issue here.

The United States argues (U.S. Br. 27) that "[i]nspection of the records enables police to determine swiftly whether a person is staying at a particular hotel" because "police can demand to inspect the register without having to seek a court order, issue a subpoena, or face litigation delays before compliance." In some cases, such searches could be justified on the basis of exigent circumstances. In the absence of genuine exigency, however, they cannot be justified under *Burger* on the ground that they would facilitate "general crime control." *City of Indianapolis* v. *Edmond*, 531 U.S. 32, 43 (2000).

2. Petitioner also has not shown that the warrantless inspections permitted by Section 41.49 are "necessary to further [the] regulatory scheme." *Burger*, 482 U.S. at 702 (quoting *Dewey*, 452 U.S. at 600) (brackets in original). All of the cases in which this Court has applied the *Burger* exception to the warrant requirement have involved industries that either are permeated with criminal activity or offer services or products that are inherently dangerous. See, *e.g.*, *id.* at 709 (explaining the relationship between junkyards and automobile theft). Petitioner cites the problems attendant to hourly motels in certain areas of Los Angeles (Pet. Br. 5-6), but it provides no evidence as to what proportion of all hotels suffer from those problems, and it offers no rationale for why hotels that do not offer hourly rates should require the intrusive spot checks contemplated under the ordinance. That criminal activity takes place at a subset of a type of business does not justify warrantless searches of the entire industry. The statute is far broader than necessary to accomplish the government's purpose.

3. Section 41.49 also fails to satisfy *Burger*'s requirement of appropriate safeguards as to "time, place, and scope * * * to place appropriate restraints upon the discretion of the inspecting officers." 482 U.S. at 711 (internal quotation marks and citation omitted). As respondent observes (Resp. Br. 41), the statute imposes no meaningful constraint on officers' discretion as to which hotels to search and how often to do so. Petitioner argues (Pet. Br. 39-40) that the element of surprise is important to ensure that hotel operators do not have an opportunity to falsify their records. Even if that were true, petitioner does not explain why surprise could not be achieved in the context of a regime that limited the discretion of individual officers as to who and where to search. The failure to provide any such limits creates the possibility of arbitrary or discriminatory enforcement and makes the statute inconsistent with *Burger*.

E. The court of appeals properly entertained a facial challenge to Section 41.49

A facial challenge to a statute is permitted when "no set of circumstances exists under which the Act would be valid," *United States* v. *Salerno*, 481 U.S. 739, 745 (1987), or the act lacks a "plainly legitimate sweep," *United States* v. *Stevens*, 559 U.S. 460, 473 (2010) (quoting *Washington State Grange* v. *Washington State Republican Party*, 552 U.S. 442, 449 n.6 (2008)). Those standards are demanding, but the court of appeals correctly determined that they are satisfied here.

1. Petitioner relies (Pet. Br. 23-24) on *Sibron* v. *New York*, 392 U.S. 40 (1968), for the proposition that

facial challenges are categorically prohibited in the Fourth Amendment context. Its reliance on that case is misplaced.

In *Sibron*, the Court stated that the "constitutional validity of a warrantless search is pre-eminently the sort of question which can only be decided in the concrete factual context of the individual case." *Id.* at 59. That statement does not mean that a Fourth Amendment facial challenge is never permitted, and in fact the Court has entertained such challenges both before and after *Sibron*. See, *e.g.*, *Berger* v. *New York*, 388 U.S. 41, 55 (1967) ("[T]he statute is deficient on its face[.]"); *Barlow's*, 436 U.S. at 325 (declaring inspection statute "unconstitutional insofar as it purports to authorize inspections without warrant or its equivalent"); see also *Skinner*, 489 U.S. at 614 (considering a "facial challenge" to "breath and urine tests required by private railroads").

Sibron involved a statute that permitted police to stop a person upon reasonable suspicion of criminal activity, and to search that person for dangerous weapons if the officer suspected he was in danger. 392 U.S. at 43-44. The Court determined that the statute was unconstitutional as applied to one of the criminal defendants in the case, but not the other, and stated that it would not invalidate the statute as a whole because "warrantless searches" of the type at issue were "pre-eminently" the kinds of searches that could only be decided within the context of their specific factual circumstances. *Id.* at 59. In so holding, the Court expressly distinguished *Berger*, which held that a New York law that established a procedure for issuing search warrants for electronic eavesdropping failed to

incorporate the safeguards required under the Constitution. *Ibid.* The constitutional validity of the statute at issue in *Sibron*, the Court explained, was "quite different from the question of the adequacy of the procedural safeguards written into a statute which purports to authorize the issuance of search warrants in certain circumstances." *Ibid.* That discussion makes clear that a facial challenge such as this one, which turns in part on whether there are sufficient procedural safeguards in Section 41.49, is still permissible.

2. A prohibition on facial Fourth Amendment challenges would be particularly inappropriate in the context of searches of third-party information. A statute that authorizes warrantless searches of a business's customer information leads consumers to believe that they should not trust that type of business with sensitive information. The mere existence of such a statute thus injures businesses that are subject to it, even before it is enforced against them. As an example, the 2013 revelations by Edward Snowden about warrantless Internet searches appear to have affected consumers' willingness to conduct activities online. See Amrita Jayakumar, *Americans say they're shopping less online. Blame the NSA*, Wash. Post (Apr. 2, 2014), http://tinyurl.com/wp14-04-02 (in a survey, 26% of people said they are engaging in less online shopping and banking since the revelation of the government's widespread surveillance programs); Claire Cain Miller, *Revelations of N.S.A. Spying Cost U.S. Tech Companies*, N.Y. Times (Mar. 21, 2014), http://tinyurl.com/nyt14-03-21 (reporting that losses to the cloud-computing industry following the Snowden revelations could range from $35 billion to $180 billion).

In the Fourth Amendment context, therefore, unconstitutional legislation can cause an immediate injury to regulated parties that is apparent without "speculat[ing] about 'hypothetical' or 'imaginary' cases." *Washington State Grange*, 552 U.S. at 450. The concreteness and immediacy of that injury make it appropriate to permit the affected businesses to challenge the law on its face. Cf. *Broadrick* v. *Oklahoma*, 413 U.S. 601, 611 (1973) (explaining that the prohibition on suits challenging the application of a law to others is relaxed "where individuals not parties to a particular suit stand to lose by its outcome and yet have no effective avenue of preserving their rights themselves").

3. On the merits, Section 41.49 is facially invalid because it is unconstitutional in all of its applications. As explained above, the validity of warrantless searches depends on whether they are conducted under a statutory scheme that satisfies the requirements of *Burger*. Because Section 41.49 is deficient, all of the searches conducted under it are invalid. Petitioner's suggestions to the contrary (Pet. Br. 19-20)—for example, that the police might obtain a warrant for the required information, that an exigency might justify the inspection, or that the hotel owner might disclose the information to the public without the compulsion of the statute—are not examples of situations in which the statute would be valid; they are examples of situations in which the statute might not need to be used. As such, they are insufficient to demonstrate that the law has valid applications.

CONCLUSION

The judgment of the court of appeals should be affirmed.

Respectfully submitted.

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AMICUS CURIAE BRIEF

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No. 13-1175

IN THE

Supreme Court of the United States

CITY OF LOS ANGELES, *Petitioner*,

v.

NARANJIBHAI PATEL, RAMILABEN PATEL, LOS ANGELES LODGING ASSOCIATION, *Respondents*.

On Writ of Certiorari
to the United States Court of Appeals
for the Ninth Circuit

Brief *Amicus Curiae* of Gun Owners of America, Inc., Gun Owners Foundation, U.S. Justice Foundation, Lincoln Institute for Research and Education, Abraham Lincoln Foundation, Downsize DC Foundation, DownsizeDC.org, Conservative Legal Defense and Education Fund, and Policy Analysis Center in Support of Respondents

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INTEREST OF THE *AMICI CURIAE*[1]

Gun Owners of America, The Abraham Lincoln Foundation for Public Policy Research, Inc. and DownsizeDC.org, are nonprofit social welfare organizations, exempt from federal income tax under Internal Revenue Code ("IRC") section 501(c)(4). Gun Owners Foundation, U.S. Justice Foundation, The Lincoln Institute for Research and Education, Downsize DC Foundation, Conservative Legal Defense and Education Fund, and Policy Analysis Center are nonprofit educational organizations, exempt from federal income tax under IRC section 501(c)(3).

These organizations were established, *inter alia*, for educational purposes related to participation in the public policy process, which purposes include programs to conduct research and to inform and educate the public on important issues of national concern, the construction of state and federal constitutions and statutes related to the rights of citizens, and questions related to human and civil rights secured by law. Each organization has filed many *amicus curiae* briefs in this and other courts.

These *amici* filed *amicus curiae* briefs in several Fourth Amendment cases in the recent past:

- Gun Owners of America, Inc. *et al.*, U.S. v. Jones, 565 U.S. ___, 181 L.Ed.2d 911 (2012)

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[1] It is hereby certified that counsel for the parties have consented to the filing of this brief; that no counsel for a party authored this brief in whole or in part; and that no person other than these *amici curiae*, their members, or their counsel made a monetary contribution to its preparation or submission.

(placing GPS on automobile as a trespass), http://lawandfreedom.com/site/constitutional/USvJones_amicus.pdf (Petition) http://lawandfreedom.com/site/constitutional/USvJones_Amicus_Merits.pdf (Merits);

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- Downsize D.C. Foundation, *et al.*, U.S. v. Wurie, Docket No. 13-212 (searches of cell phones incident to arrest), http://www.lawandfreedom.com/site/constitutional/Wurie%20DDCF%20Amicus%20Brief.pdf;
- U.S. Justice Foundation, *et al.*, Quinn v. Texas, Docket No. 13-765, January 27, 2014 (no-knock warrants), http://www.lawandfreedom.com/site/firearms/Quinn%20v%20Texas%20amicus%20brief.pdf;
- U.S. Border Control, *et al.*, Cotterman v. U.S., Docket No. 13-186 (suspicionless border searches), http://lawandfreedom.com/site/constitutional/Cotterman_v_US_Amicus.pdf; and
- U.S. Justice Foundation, *et al.*, Rodriguez v. U.S., Docket No. 13-9972 (dog sniff after completion of traffic stop), http://www.lawandfreedom.com/site/constitutional/Rodriguez%20USJF%20Amicus%20Brief.pdf.

SUMMARY OF ARGUMENT

Just three years ago, in United States v. Jones, this Court returned the Fourth Amendment to its original primary purpose — to protect the property rights vested by the common law in the "persons, houses, papers, and effects" of the people. To that end, in Florida v. Jardines, the Court established the people's property rights as the Fourth Amendment baseline. Although the Court has continued to recognize that the Fourth Amendment additionally protects the people's reasonable expectations of privacy, such privacy expectations can only add to, but cannot subtract from, the people's protected property rights.

In compliance with Jones, the *en banc* court of appeals below found that the hotel guest registry, required by the City of Los Angeles to be kept, is the private property of the hotel, and that the hotel's property right to the registry is a "paper" protected from an unreasonable search and seizure under the Fourth Amendment. That finding is not in dispute in this case. What is in dispute is whether a warrantless search of that property at the sole discretion of a police officer is "unreasonable," and thus an unconstitutional intrusion upon the hotel's liberty.

According to the parties to this case, the question of unreasonableness depends upon the strength of the hotel's expectation of privacy in its registry. The parties are mistaken. Any speculation about expectations of privacy should not even be reached. According to the Jones and Jardines property baseline,

the question of unreasonableness depends first and foremost upon whether the code authorizes a trespassory intrusion upon the hotelier's constitutionally protected property right. Because there is nothing in the record showing that the intrusion authorized by the city code is anything but non-consensual, the code's authorization of a warrantless search is, on its face, unreasonable and, therefore, in violation of the Fourth Amendment's property rights baseline.

Relying on New York v. Burger and United States v. Biswell, the City contends that, as a highly regulated industry, hotels and motels are not entitled to full Fourth Amendment protection. But this exception, carved out by this Court before Jones and Jardines were decided, is squarely based upon an attenuated expectation of privacy which, if continued, would undermine the Jones/Jardines property baseline. For this reason alone, the City's reliance upon Burger and Biswell is misplaced.

The City's argument that businesses should have lesser Fourth Amendment rights than private residences is absurd. Indeed, the Fourth Amendment traces its lineage to warrantless searches of businesses. In defending business owners against the infamous writs of assistance that had been used for warrantless searches of Boston merchants and ship owners, James Otis called the practice "the worst instrument of arbitrary power [and] destructive of English liberty." John Adams later recalled that speech as being the moment the American Revolution was born.

Additionally, the City's reliance on Biswell is seriously misjudged. Biswell dealt with a random, warrantless inspection scheme that Congress has since repudiated, which intruded upon the records and premises of federally licensed firearms dealers. Congress later concluded that the Biswell-approved scheme violated the Fourth Amendment, and thus federal law currently permits only one annual warrantless inspection of the firearms licensee's premises and records. Finally, Biswell wrongfully equated the manufacture and sale of firearms to the making and marketing of alcohol that could not withstand analysis then, much less today, after District of Columbia v. Heller and McDonald v. City of Chicago.

ARGUMENT

I. ON ITS FACE, THE LOS ANGELES CITY ORDINANCE UNLAWFULLY INTRUDES UPON RESPONDENTS' PROPERTY RIGHTS IN THEIR GUEST REGISTERS.

In an historic decision just three years ago, this Court returned the Fourth Amendment to its original purpose — to protect the people's property rights "in their persons, houses, papers, and effects, against unreasonable searches and seizures." *See* United States v. Jones, 565 U.S. ___, 132 S.Ct. 945, 949 (2012).

Condemning trespassory intrusions on private property, Jones put to rest the widely-held notion that, under Katz v. United States, 389 U.S. 347 (1967), the

Fourth Amendment protected foremost the people's "reasonable expectations of privacy." Katz, the Court asserted, had caused many to assume that, unless the government intruded on such a privacy interest, there could be no violation of the Fourth Amendment's command against unreasonable searches and seizures. *See* Jones at 950. Instead, the Jones Court explained, "the Katz reasonable-expectation-of-privacy test [was] *added to*, not *substituted for*, the common-law trespassory test." *Id.* at 952.

Fourteen months later, this Court clarified the relationship between Jones and Katz, first affirming that the Fourth Amendment:

> establishes a simple **baseline**, one that for much of our history formed the exclusive basis for its protections: When "the Government obtains information by physically intruding" on persons, houses, papers, or effects, "a 'search' within the original meaning of the Fourth Amendment" has "undoubtedly occurred." [Florida v. Jardines, 569 U.S. ___, 133 S.Ct. 1409, 1414 (2013) (emphasis added).]

Second, the Court confirmed that "property rights" are not the "sole measure of Fourth Amendment violations." Jardines at 1414. However, "'when the Government [does not] engage in [a] physical intrusion of a constitutionally protected area,'" the Katz privacy formulation "may **add to the baseline,** [but] does **not subtract** anything from the Amendment's protections." *See* Jardines at 1414 (emphasis added). *See also id.* at 1417.

Following Jones, the *en banc* court of appeals found that because the "[r]ecord inspections under § 41.49 [of the City code] involve[d] a physical intrusion upon a hotel's papers"[2] in which the hotel had a property right, "[a] police officer's non-consensual inspection of hotel guest records plainly constitutes a 'search' under ... the property-based approach of *Jones*." *Id.* at 1061-62. At the same time, the *en banc* court also found that the search authorized by the city code constituted a search under "the privacy-based approach of *Katz*." *Id.* at 1062. Having made these twin findings, the court turned to the question whether the search authorized by the city code was "reasonable." *Id.* at 1063. Instead of conforming its analysis to the property rights baseline, as dictated by Jones and Jardines, the court below departed from that baseline, relying exclusively on court precedents based entirely upon the Katz expectation of privacy test. *See id.* at 1063-64. Consequently, the issues presented to this Court by both the Petitioner and the Respondents are based upon the assumption that the reasonableness of the physical intrusion upon the hotel's Fourth Amendment protected property right in its guest registry records turns on the Katz privacy expectation test,[3] not the

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[2] Patel v. City of Los Angeles, 738 F.3d 1058, 1061 (9th Cir. 2013).

[3] The *en banc* majority presumed, on the basis of a "lack [of] an expectation of privacy," that the guests themselves had no protected Fourth Amendment interest in the "information" that they had "voluntarily" provided to the hotel. *See* Patel at 1062. However, Justice Sotomayor, concurring in Jones, recognized the problems inherent in deciding that a "voluntary" divulgement of information to a private entity for a particular purpose is

Jones trespassory test. *See* Brief for Petitioner ("Pet. Br.") at 33, 51-52; Brief for Respondents ("Resp. Br.") at 33, 55-56.

Both the *en banc* court and the parties are mistaken. This Court "need not decide whether [a police] officers' investigation of [the company's business records] violated [the company's] expectation of privacy under *Katz*." *See* Florida v. Jardines, 569 U.S. ___, 133 S. Ct. 1409, 1417 (2013). Rather, the question to be decided is whether the city ordinance authorizes an unconstitutional trespassory intrusion upon the hotel's property rights in its guest registry.

Since the officer's investigation authorized by the city ordinance would take "place in a constitutionally protected area," the question is whether the intrusion would be accomplished through an "unlicensed physical intrusion." Jardines at 1415. Any nonconsensual physical intrusion upon a company's business records kept from public view would be fully comparable to, and just as impermissible as, a nonconsensual physical intrusion upon one's home, which is "so sacred, that no man can set his foot upon his neighbour's close without his leave." *Id.* *See also* Boyd v. United States, 116 U.S. 746, 625-26 (1886).

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tantamount to a forfeiture of Fourth Amendment rights to the government for any purpose. In her separate opinion, Justice Sotomayor stated that "it may be necessary to reconsider the premise that an individual has no reasonable expectation of privacy in information voluntarily disclosed to third parties." Jones, 132 S. Ct. at 957.

According to the application of the property baseline here, the only remaining question is whether there is an express or implied license permitting the Los Angeles police to examine the guest register that the hotelier is required by city ordinance to keep. If there is no such license, then the warrantless intrusion authorized by the city code would be unreasonable under the Fourth Amendment.[4] Although the City attempts to establish that warrantless searches of hotel guest registers was an established practice during the founding era, the City does not suggest that the historic record would support an implied license for the police to conduct a warrantless search of such records. Rather, the City argues that the historic record supports its argument that "[h]otels have a diminished **privacy** interest in their guest registers." Pet. Br. at 51 (emphasis added). In any event, the historic record of access to hotel guest registers falls far short of the evidence necessary to infer that by one's entry into the hotelier business, the owner and

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[4] The *en banc* majority presumed that the only constitutionally –imposed barrier protecting the hotel's property right in its business records was the Fourth Amendment's warrant, probable cause, and particularity requirements. Under the Fourth Amendment's original property rights principle, however, unless the government can establish a property right superior to that of the hotel, it cannot search for or seize such records unless they are contraband, fruits of a crime or an instrumentality of a crime. If the government's interest is no more than informational, then the search should be unlawful under the "mere evidence" rule. *See* Gouled v. United States, 255 U.S. 298 (1921). Happily, this Court's abandonment of that rule need not be addressed in this case.

operator have impliedly consented to a police search of their guest registry. *See* Resp. Br. at 56-59.

By ignoring the Fourth Amendment property-rights baseline, the court below and the parties have unnecessarily complicated this case by inviting this Court to reach an issue that it need never decide — whether an investigation of a hotel's guest registry implicates the hotel's or guests' expectation of privacy.[5] As this Court emphasized in Jardines, and as the above analysis demonstrates, "[o]ne virtue of the Fourth Amendment's property-rights baseline is that it keeps easy cases easy." *See* Jardines at1417.

II. THE CITY'S ARGUMENT THAT THE SEARCH AUTHORIZED BY THE CITY CODE IS REASONABLE CONFLICTS WITH JONES AND JARDINES.

Throughout its brief, the City of Los Angeles has completely ignored this Court's teaching in Jones and Jardines. Indeed, the City has acted as if the two cases do not exist. Not once in its entire brief has the

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[5] Indeed, the privacy expectation is, in reality, just another balancing test that empowers judges, in the name of constitutional law, to reach a pre-ordained result that has no textual support in the Constitution. *See* Patel, 738 F.3d at 1070-74 (Clifton, J., dissenting). Of course, as this Court warned in District of Columbia v. Heller, 554 U.S. 570 (2008), "[a] constitutional guarantee subject to future judges' assessment of its usefulness is no constitutional guarantee at all." *Id.* at 634.

City even alluded to the Jones property baseline.[6] And not once in its entire brief has the City even cited Jardines, much less indicated any awareness that the absence of any privacy expectation cannot "subtract" from the Fourth Amendment protection against "physical intruding on constitutionally protected areas." Jardines at 1417. To the contrary, the City's entire argument is based upon the claim that the "touchstone of any Fourth Amendment analysis is reasonableness and that inquiry turns on the circumstances surrounding the search:"

> Assessing the general reasonableness of the administrative searches contemplated by § 41.49 thus requires weighing the degree which the searches intrude upon an individual's **privacy** against the degree to which the searches are necessary to promote legitimate governmental interests. [Pet. Br. at 14. (emphasis added).]

The City has attempted to bolster its argument with claims from history. *See* Pet. Br. at 33-36, 49-50. But the City invoking the historic record does nothing to refute a hotelier's private property interest in its business records, or to establish some kind of implied license or consent to police investigations of hotelier guest registers. *See, e.g.*, Pet. Br. at 51. And the City

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[6] To be sure, the City finally cites Jones, but not to the majority opinion that establishes the new property rights baseline. Rather, the City cites Justice Sotomayor's concurring opinion that addresses the privacy interests of persons who voluntarily disclose certain information to third parties. *See* Pet. Br. at 52.

has certainly made no effort to argue that any of the cited historic practices would support a finding that a "'license may be implied from the habits of the country,'" such as recognized in Jardines. *See id.* at 1415. Rather, the City argues the case exclusively from a privacy perspective, referring to such historic practices to support its claims that (i) "the individual **privacy** concerns pale in comparison to the City's legitimate interests in deterring prostitutes, drug dealers, and other serious criminals from committing crimes in hotels;" (ii) "[h]otels have only a **limited privacy** interest in their required registers;" (iii) "a register of guests' names, addresses, and license plate numbers is **not highly personal** information about the hotel;" and (iv) "record inspections ... are ... particularly unobtrusive as the police need never step foot into the hotel's **private places** and are authorized to look only at the register itself." *See* Pet. Br. at 16 (emphasis added).

Ignoring altogether the hotelier's property interest in its guest register, the City conveniently focuses solely upon hotelier's privacy interests, urging this Court to conclude that the search authorized by its ordinance is not "unreasonable" in light of the hotelier's attenuated privacy interest. By interjecting the hotelier's expectation of privacy into its reasonableness analysis, the City subordinates the hotelier's property rights to his privacy expectations and, thereby, subverts the Fourth Amendment property rights baseline established in Jones and Jardines. Because the City may not insist at the front end that privacy expectations determine whether a non-consensual inspection of hotel guest records is a

"search" within the meaning of the Fourth Amendment, the City should not be allowed to sneak the privacy expectation in at the back end to determine the "reasonableness" of a search under that Amendment. To rule otherwise would completely erase the Fourth Amendment's property rights baseline.

III. THE CITY'S RELIANCE ON NEW YORK v. BURGER IS MISPLACED.

Throughout its brief, the City has relied upon New York v. Burger, 482 U.S. 691 (1987). *See* Pet. Br. at 14, 17-18, 28, 30-47. Burger, as acknowledged by the City, stands for the proposition that "owners of 'commercial premises' in 'closely regulated' industries have 'reduced expectations of **privacy,**' and the 'government interests in regulating' such business are 'concomitantly heightened." Pet. Br. at 30 (emphasis added). Indeed, as this Court stated in Burger:

> [T]he Fourth Amendment's prohibition on unreasonable searches and seizures is applicable to commercial premises, as well as to private homes.... An owner or operator of a business thus has an **expectation of privacy** in commercial property, which society is prepared to consider to be reasonable.... An **expectation of privacy in commercial premises, however, is different from, and indeed less** than, a similar expectation in an individual's home.... This expectation is particularly attenuated in commercial

> property employed in "closely regulated" industries. [*Id.* at 699-700 (emphasis added).]

Based upon this "reduced expectation of privacy" predicate, the Court in Burger ruled that "the warrant and probable-cause requirements, which fulfill the traditional Fourth Amendment standard of reasonableness for a government search, have **lessened** application in this context."[7] *Id.* at 702 (emphasis added). Thus, the Court in Burger "conclud[ed] that ... where the **privacy** interests of the owner are weakened and the government interests in regulating particular businesses are concomitantly heightened, a **warrantless** inspection of commercial premises may well be reasonable within the meaning of the Fourth Amendment." *Id.* (emphasis added).

In short, under the Burger rule, a business owner's property rights in his commercial premises must give way to a government search that would otherwise be unreasonable — because of a lower expectation of privacy derived from Katz. This is the very analysis that this Court has since discarded. In Jones, the

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[7] Burger appears out of step with other precedents in which other rights are not given a "lessened application" in the business or corporate context. Most recently, in Citizens United v. FEC, 558 U.S. 310 (2010), this Court "rejected the argument that political speech of corporations or other associations should be treated differently under the First Amendment simply because such associations are not 'natural persons.'" *Id.* at 343. Likewise, "[t]he right of the people to be secure in their persons, houses, papers, and effects" should not be construed differently depending on whether they are at home or at the office, or whether they are balancing their personal checkbooks or the firm's.

Court ruled that the Fourth Amendment foremost protects property rights, not expectations of privacy. In Jardines the Court held that, whatever privacy interest is recognized under the Fourth Amendment, privacy cannot be employed so as to diminish a property right that is otherwise protected by the Fourth Amendment.

At no point in its brief does the City deny that hotels and motels have a property interest in the guest register that is required to be kept by the Los Angeles ordinance. Instead, the City assiduously avoids addressing that issue — for obvious reasons.[8] But the *en banc* court of appeals majority opinion did not. After devoting a good deal of attention to the property question, the court below found that a Los Angeles hotel or motel has a Fourth Amendment property interest in its guest register as a protected "paper." It also found that business owners need not prove that,

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[8] As Respondents point out, the district court was not so reserved, "concluding that hotels and motels do not have an ownership or possessory interest that gives rise to a privacy right in their guest registries because those registries were created in order to comply with the ordinance." Opp. Br. at 3. This argument is absurd. On the one hand, the Ninth Circuit previously has held that guests have no interest in the hotel registry because they provided — under force of law (Los Angeles Municipal Code 41.49(4) and (6)) — their names to the hotel. *See* United States v. Cormier, 220 F.3d 1103, 1108 (9th Cir. 2000). On the other hand, the district court held that the hotel itself has no interest in its own registry because the registry was also created under penalty of law. The result of these two holdings is that, simply by enacting one law that forces the guest to divulge his identity, and another which forces the hotel to record that identity and divulge it to the police, no one is protected by the Fourth Amendment.

"as a factual matter, that their business records are subject to a reasonable expectation of privacy ... any more than homeowners are required to prove that papers stored in a desk drawer are subject to a reasonable expectation of privacy." *See* Patel v. City of Los Angeles, 738 F.3d 1058, 1062 (9th Cir. 2013).

In other words, business records located in a commercial establishment and personal papers located in a residence are equally protected by the Fourth Amendment, because in both situations the owner has the same property interest protected by the Fourth Amendment. Any claim by the City, as here, that the business record owner's protected property interest is reduced because of a diminished expectation of privacy is foreclosed by Jones and Jardines. The Burger rule to the contrary, therefore, is erroneous.[9]

Indeed, the very roots of the Fourth Amendment trace back to the protection of the People's businesses, rather than the protection of the People's homes. James Otis, Jr., once Advocate-General for the British Crown, was asked to argue in favor of the use of now-infamous writs of assistance. Such writs had been used extensively in the colonies to search businesses, ships, etc. for smuggled goods that had evaded taxation. In a dramatic juxtapose, Otis resigned from his position, and represented the very Boston merchants he had been opposing.

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[9] The Court may want to reconsider Burger at this time, but Burger at a minimum should not be applied as though Jones and Jardines had never been decided, as the City apparently would prefer.

In defending its writs of assistance the Crown, like Los Angeles, no doubt believed that it had "legitimate interest in deterring [smugglers, tax evaders], and other serious criminals from committing crimes." *See* Pet. Br. at 16. No doubt the Crown believed that importers and merchants should be treated as "closely regulated industr[ies]." *Id.* at 14. No doubt, the Crown believed that "[w]arrantless inspections of [ships and cargo] are necessary to further this important interest." *Id.* at 15. No doubt the Crown believed that "[a writ of assistance] is an adequate substitute for a warrant" based upon probable cause. *Id.* No doubt the Crown believed that "the individual privacy concerns pale in comparison to the [Crown's] legitimate interest[s]," because "[a merchant's wares and a ship's cargo] is not highly personal information about the [merchant or shopkeeper]." *Id.* at 16.

In his famed address, Otis likened writs of assistance to "instruments of slavery" and described them as "the worst instrument of arbitrary power, the most destructive of English liberty and the fundamental principles of law." James Otis, "Against Writs of Assistance" (Feb. 24, 1761). Years later, John Adams described Otis' oration as a "flame of fire," and explained that "American independence was then and there born. The seeds of patriots and heroes ... was then and there sown.... Then and there the child Independence was born. In fifteen years ... he grew up to manhood and declared himself free." J. Adams & J. Sewall, Novanglus, and Massachusettensis: Or, Political Essays, Published in the Years 1774 and 1775, on the Principal Points of Controversy, Between Great Britain and Her Colonies, Hews & Goss (1819).

As the Fourth Amendment traces its lineage to the rights of Boston merchants rather than Boston homeowners, the City's argument — that businesses are deserving of less Fourth Amendment protection — would have shocked and disappointed the framers of that Amendment.

IV. THE CITY'S RELIANCE ON THE OUTDATED MISTREATMENT OF FEDERALLY LICENSED FIREARMS DEALERS APPROVED IN U.S. v. BISWELL IS SORELY MISPLACED.

The City also relies on United States v. Biswell, 406 U.S. 311 (1972), although not as heavily as it relies on Burger. The Court in Biswell permitted unannounced warrantless searches of business records and premises of a federally-licensed firearms dealer without any consideration of the dealer's property rights under the Fourth Amendment. Abandoning the Amendment's property rights principle, the Biswell Court justified "unannounced, even frequent, inspections" because they allegedly "pose[d] only limited threats to the dealer's **justifiable expectations of privacy**." *Id.* at 316 (emphasis added).

Completely omitted from Biswell is any mention of the now-recognized foremost purpose of the Fourth Amendment — the protection of property rights in one's "person, house, papers and effects." Instead, the Biswell Court "ha[d] little difficulty in concluding [that] regulatory inspections further urgent federal interest, and the possibilities of abuse and the **threat**

to privacy are not of impressive dimensions, [so] the inspection may proceed without a warrant." *Id.* at 317 (emphasis added).

Later, the Court in Burger would parlay these casual privacy references in Biswell into a full-throated justification for its newly crafted "closely regulated" industry exception to the Fourth Amendment. *See* Burger at 699-702. As is true of Burger, so it is true of Biswell — both precedents have been undermined by the teaching of Jones and Jardines. There is every reason to believe that "closely regulated" industries should be treated the same as any other, for the Biswell/Burger exception is based solely and squarely on an attenuated expectation of privacy, and thereby would subvert the property rights baseline revitalized by Jones and Jardines.

Additionally, Biswell is weakened by the 1986 Firearms Owners Protection Act ("FOPA") repeal of the Gun Control Act ("GCA") provision that authorized "unannounced warrantless inspections" of the business premises and records of federally-licensed dealers. Enacted over the strong objection of the Bureau of Alcohol, Tobacco, and Firearms ("ATF"), 18 U.S.C. Section 923(g)(1) now prohibits inspections of business premises and records without reasonable cause of violation and a warrant, except for (i) annual inspections to "ensur[e] compliance with the record keeping requirements" of the firearms chapter, and (ii) "in the course of a reasonable inquiry [related] to a criminal investigation of persons other than the licensee." FOPA overrode ATF's contention that:

> The prohibition against unannounced inspections would enable unscrupulous licensees to conceal violations of the law; (b) limiting compliance inspections to a single, annual inspection would have the same result and would be too infrequent to ensure compliance.... [Assessment by the ATF (Feb. 10, 1986), reprinted in 4 U.S.C.C.A.N. 1342 (99th Cong., 2d Sess. 1986).]

In its findings, Congress explained that it was moved to make such changes, in part, to protect "the rights of citizens ... to security against illegal and unreasonable searches and seizures under the fourth amendment...." Pub. Law No. 99-308, 100 *Stat.* 449 (1986).

Biswell is further discredited by its mistaken assumption that the manufacture and sale of firearms is analogous to the brewing or distilling and sale of alcohol. In Colonnade Catering Corp. v. United States, 397 U.S. 72 (1970), this Court observed the potential of federal statutory authority for warrantless searches and seizures of liquor, observing that Congress has been especially "solicitous in protecting the revenue against various types of fraud and to that end has repeatedly granted federal agents power to make warrantless searches and seizures of articles under the liquor laws." *Id.* at 75. Contrary to the Biswell Court's putting firearms into the same category as beer and bourbon (*id.* at 315), Congress has affirmed that in regulating the firearms trade it has always purposed not "to place any undue or unnecessary Federal restrictions or burdens on law-abiding citizens with respect to the acquisition, possession, or use of

firearms appropriate to the purpose of hunting, trapshooting, target shooting, personal protection, or any other lawful activity." *See* Pub. Law No. 90-618, 82 *Stat.* 1213-14.

Finally, Biswell is outmoded, decided before District of Columbia v. Heller and McDonald v. City of Chicago, 561 U.S. 742 (2010), which established that the Second Amendment secures to individuals the right to keep and bear arms.

In sum, there is no basis for the City's reliance on the Biswell Court's[10] approval of an ATF scheme of unannounced and warrantless inspection which was repudiated by Congress in 1986 with its enactment of FOPA.

CONCLUSION

For the reasons stated, the *en banc* court of appeals ruling should be affirmed on grounds consistent with this Court's rulings in Jones and Jardines.

Respectfully submitted,

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[10] *See* Pet. Br. at 40, 42, and 44.

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CITY OF LOS ANGELES,

Petitioner,

v.

NARANJIBHAI PATEL, et al.,

Respondents.

On Writ Of Certiorari To The United States Court Of Appeals For The Ninth Circuit

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INTEREST OF THE *AMICUS CURIAE*

The Institute for Justice[1] ("IJ") is a nonprofit, public-interest law center committed to defending the essential foundations of a free society and securing the constitutional protections necessary to ensure individual liberty. A central pillar of IJ's mission is to protect private property rights, both because an individual's control over his own property is a tenet of personal liberty and because property rights are inextricably linked to all other civil rights. *See United States v. James Daniel Good Real Prop.*, 510 U.S. 43, 61 (1993) ("Individual freedom finds tangible expression in property rights.").

The aggressive enactment of warrantless search procedures by legislatures poses a grave threat to the protection of property rights. It is for this reason that in several jurisdictions, IJ has challenged the facial validity of ordinances authorizing mandatory inspections of private homes without either consent or a warrant issued upon a showing of probable cause. *See, e.g.*, *McCaughtry v. City of Red Wing*, 831 N.W.2d 518 (Minn. 2013); *Black v. Vill. of Park Forest*, 20 F. Supp. 2d 1218 (N.D. Ill. 1998); *Brumberg v. City of Marietta,* No. 04-1-5794-34 (Super. Ct. of Cobb Cnty., Ga., filed July 21, 2004).

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[1] This brief is filed based on the parties' written blanket consents filed with this Court. No counsel for a party authored this brief in whole or in part; nor did any person or entity, other than *amicus* and its counsel, make a monetary contribution intended to fund the preparation or submission of this brief.

IJ's ability to challenge these ordinances on their face is crucial to our work. Ordinances mandating warrantless, nonconsensual inspections of private homes are plainly unconstitutional under *Camara v. Municipal Court*, 387 U.S. 523 (1967), where this Court facially invalidated such an ordinance. Despite *Camara*, however, cities still adopt and enforce materially identical ordinances. Only facial invalidation of these ordinances will prevent cities from adopting and enforcing them. As-applied challenges by those fortunate enough to receive IJ's representation – or wealthy enough to hire a private attorney – will only prevent the ordinances' application in individual cases. Cities will still be able to continue to violate the Fourth Amendment against the next tenant or property owner. Foreclosing facial challenges under the Fourth Amendment – as this Court is considering in the first Question Presented in this case – will therefore largely foreclose IJ's ability to use the Fourth Amendment to protect property rights.

SUMMARY OF THE ARGUMENT

Amicus provides two main arguments for why this Court should preserve Fourth Amendment facial challenges. First, to demonstrate the practical effect that an abandonment of such challenges would have, *amicus* discusses the importance of Fourth Amendment facial challenges in one concrete setting: laws mandating warrantless, nonconsensual home inspections – inspections similar to the inspection of hotels

at issue in this case. Second, more generally, *amicus* demonstrates that Fourth Amendment facial challenges are proper as a matter of history, law, and practice.

First, in *Camara v. Municipal Court*, 387 U.S. 523 (1967), this Court determined a San Francisco ordinance requiring such inspections to be facially unconstitutional. Despite this, cities continue to adopt and enforce materially identical ordinances. However, facial challenges have enabled many law-abiding citizens to invalidate these laws, protecting the privacy and sanctity of their homes and preventing the laws from being enforced against anyone else. To bar facial challenges under the Fourth Amendment would mean these challenges could only be brought as-applied, allowing the government to enforce an obviously unconstitutional law against the next unsuspecting citizen not fortunate enough to be able to mount a legal challenge. It would also essentially vacate this Court's facial ruling in *Camara*.

Second, facial challenges to legislation are entirely in keeping with the history and purpose of the Fourth Amendment's adoption. The Amendment was not only intended to address evils such as writs of assistance, but legislation authorizing them to be issued. Further, this Court has specifically sanctioned, in *Illinois v. Krull*, 480 U.S. 340, 352, 354 (1987), facial invalidation as the best means to deter legislatures from adopting laws authorizing unconstitutional searches and seizures. It also has facially invalidated statutes and ordinances under the Fourth Amendment

a number of times, making clear that facial adjudication is particularly appropriate in areas with overriding legal issues. Finally, concerns over advisory opinions and ripeness are not valid objections to Fourth Amendment facial challenges. These concerns arise from a misunderstanding of the difference between facial and as-applied challenges. The difference is in the remedy, not the procedural posture, evidentiary requirements, or underlying merits of a claim.

To answer the question of whether facial challenges should *ever* be available under the Fourth Amendment, the Court need only perform a simple thought experiment. Substitute the words "private homes" for "hotel guest records." Such a law, allowing warrantless searches of homes, would fly in the face of the most "basic principle of Fourth Amendment law": that "searches and seizures inside a home without a warrant are presumptively unreasonable." *Payton v. New York*, 445 U.S. 573, 586 (1980). The law would, of course, be exceedingly unconstitutional.

A facial challenge would be the most sensible way to address such a statute. Fourth Amendment facial challenges enable a single law-abiding citizen to vindicate this right for *everyone* against laws that violate the Fourth Amendment. And such facial challenges ensure that this service may be performed *before* anyone must face the choice of either allowing the police to conduct an unconstitutional search or going to jail for refusing to comply. This Court should

not forbid this sensible and historically accepted tool of relief.

ARGUMENT

I. Fourth Amendment Facial Challenges Enable Law-Abiding Citizens to Protect the Privacy and Sanctity of Their Homes.

Residents (both tenants and resident homeowners) and landlords routinely raise facial Fourth Amendment challenges (and routinely succeed in those challenges) to ordinances which mandate the warrantless, nonconsensual inspection of their homes. Indeed, despite this Court's categorical ruling in *Camara v. Municipal Court*, 387 U.S. 523 (1967), that cities must obtain a warrant before making a nonconsensual inspection of a residence – and that cities cannot punish a tenant or property owner's refusal to allow a warrantless inspection – there are countless ordinances across the nation that make warrantless home inspections mandatory. These ordinances, on their face, make a refusal to allow a home inspection without a warrant result in the denial of a license or even fines and imprisonment. Landlords, tenants, and resident homeowners must be allowed to challenge these clearly unconstitutional ordinances on their face, or their ready adoption and enforcement will only multiply.

This Section describes how this Court has already determined that an ordinance allowing for warrantless, nonconsensual home inspections is on its face a violation of the Fourth Amendment. This includes a discussion of how the facial invalidation of a law authorizing warrantless searches that do not fall under an exception to the Fourth Amendment's warrant requirement is just as legitimate as the facial invalidation of a law authorizing invalid warrants. This Section then provides a sample of similar ordinances on the books in cities today, despite what this Court has said. It then highlights several lower court opinions where judges have properly adjudicated facial challenges to these ordinances, declaring them unconstitutional and even enjoining their enforcement.

Together, these examples of successful challenges to facially unconstitutional laws, and identical laws that are currently being enforced, demonstrate that, without the ability to bring Fourth Amendment facial challenges, cities will be able to enforce these laws without fear that a court will prevent them from continuing to enforce them. Thus, although a handful of people might be able to afford the expense of mounting one-off as-applied challenges (either pre-enforcement or as a defense to a prosecution), an unconstitutional inspection regime will continue to operate as applied to everyone else because a facial ruling, and its tools of relief, including a facial injunction, will be unavailable. Only a rule of law allowing for the vigorous use of Fourth Amendment facial

challenges – both pre-enforcement facial challenges and facial challenges made as a defense – can prevent cities from enforcing these categorically unconstitutional laws.

A. This Court ruled in *Camara v. Municipal Court* that laws authorizing warrantless, nonconsensual home inspections facially violate the Fourth Amendment.

If this Court concludes that facial challenges to ordinances are not permitted under the Fourth Amendment it will essentially be overruling its holding in *Camara v. Municipal Court* and that opinion's categorical protection of a resident's privacy and property rights. In *Camara*, a tenant objected to a city housing inspector's demand that the inspector be allowed to view the interior of his apartment. 387 U.S. at 526. The request was made as part of a routine inspection. *Id.* at 526-27. The ordinance required tenants to provide inspectors with access to their residences and subjected those who did not comply with criminal sanctions. *Id.* After the tenant refused he was arrested. *Id.*

While awaiting trial, the tenant filed an action in state court requesting a writ of prohibition. *Camara v. Municipal Court*, 237 Cal. App. 2d 128, 130 (Cal. Ct. App. 1965). Although early in the proceedings he also pursued an as-applied claim under the Fourth Amendment (in addition to claims under the California Constitution), *id.* at 130, 137 n.3, the only claim

that reached this Court was his facial challenge to the ordinance under the Fourth Amendment. *See* 387 U.S. at 525 ("Appellant brought this action that a writ of prohibition should issue to the criminal court because the ordinance authorizing such inspections *is unconstitutional on its face*." (emphasis added)); 237 Cal. App. 2d at 137 n.3 ("Plaintiff thereafter elected to stand upon the assertion that the ordinance *was unconstitutional on its face*." (emphasis added)).

The city argued Mr. Camara's claim must fail under *Frank v. Maryland*, 359 U.S. 360 (1959), an earlier case in which the Court had concluded the Fourth Amendment did not require the government to obtain a warrant to perform a nonconsensual home inspection that is part of a "fire, health, and housing inspection program[ ]." *Camara*, 387 U.S. at 530. The Court, however, overruled *Frank*, holding that searches of homes, even in the civil inspection context, require the government to obtain warrants when residents object. *Id.* at 534.[2]

Furthermore, the Court held that since demanding a government official obtain a warrant to perform an administrative inspection is a right guaranteed by the Fourth Amendment, it is unconstitutional for the government to *punish* a resident for simply so demanding. *Id.* at 540. Thus, a clear holding of this

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[2] Further, a companion case, *See v. City of Seattle*, 387 U.S. 541 (1967), extended *Camara*'s holding to owners of commercial property, in that case a locked warehouse.

Court is that an ordinance is facially unconstitutional if it punishes a resident for simply not allowing access to his home and demanding the government obtain a warrant before performing an administrative inspection.[3]

Even though *Camara* was a facial ruling, the Court analyzed the enforcement of the challenged ordinance against Mr. Camara. *Cf.* Resp't's Br. 22 (stipulation that ordinance has been enforced against Respondents). This demonstrates that "facial challenge" does not mean a challenge without any facts. It simply means that a law is unconstitutional beyond its application to the challenging party. *Cf. Citizens United v. FEC*, 558 U.S. 310, 375-76 (2010) (Roberts, C.J., concurring) (explaining that given the nature of an underlying legal claim, if that claim is successful a law can be declared unconstitutional beyond the challenging party).

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[3] Another part of the *Camara* opinion – Section II – stated that the warrant the government must obtain to force a resident to allow an administrative inspection does not have to require traditional individualized probable cause, but only a lower level of "probable cause" where evidence of a code violation in an individual dwelling is not required. *Camara*, 387 U.S. 534-39. Amicus disagrees with this section of *Camara* for several reasons – including that it is contrary to the original meaning and purpose of the Fourth Amendment – and has worked to have this Court revisit the issue. *See* Brief of *Amicus Curiae* Institute for Justice in Support of Petition for Writ of Certiorari, *Nelson v. City of Rochester* (U.S. No. 12-646). However, as Section II of *Camara* is not directly relevant to the arguments in this brief, or in the present case, *amicus* does not address the probable cause issue any further here.

At this point, it is important to observe that under this Court's Fourth Amendment jurisprudence, two types of search-authorizing laws exist: (1) laws authorizing searches *based on the issuance of a warrant*; and (2) laws authorizing searches *without a warrant*. *Camara* was of the latter type. As to the first type, this Court has recognized that facial review is entirely available to address "the adequacy of the procedural safeguards written into a statute which purports to authorize the issuance of search warrants in certain circumstances." *Sibron v. New York*, 392 U.S. 40, 59 (1968). Indeed, "[n]o search required to be made under a warrant is valid if the procedure for the issuance of the warrant is inadequate to ensure the sort of neutral contemplation by a magistrate of the grounds for the search and its proposed scope." *Id.* Thus, if a law were to, for example, permit search warrants to be issued without requiring any specific description of "the persons or things to be seized," the law would be "plainly invalid" under the Fourth Amendment. *Groh v. Ramirez*, 540 U.S. 551, 557 (2004).

As *Camara* demonstrates, facial review is equally possible with respect to laws that authorize warrantless searches. But because the Fourth Amendment does not delineate explicit standards for warrantless searches (unlike the limits that it places on the issuance of warrants), such review is premised on "the basic rule that 'searches conducted outside the judicial process, without prior approval by judge or magistrate, are *per se* unreasonable under the Fourth

Amendment – subject only to a few specifically established and well-delineated exceptions.'" *Arizona v. Gant*, 556 U.S. 332, 338 (2009) (quoting *Katz v. United States*, 389 U.S. 347, 357 (1967)). Only the Court has the power to establish these exceptions and the legislature may not contravene these "constitutional rules" in enacting laws that authorize warrantless searches. *Dickerson v. United States*, 530 U.S. 428, 437-38 (2000) ("Congress may not legislatively supersede our decisions interpreting and applying the Constitution."); *see also City of Boerne v. Flores*, 521 U.S. 507, 517-21 (1997). When the Court has given a firm "no" to a proposed exception – as it did in *Camara* to regulatory inspections of homes – a law nevertheless authorizing warrantless searches in that area is facially unconstitutional.

B. Despite this Court's ruling in *Camara*, local governments continue to enact laws that authorize warrantless, non-consensual home inspections.

The holding of *Camara*, and its companion case, *See v. City of Seattle*, is unambiguous. The government may not mandate that a tenant or property owner submit to a non-emergency administrative inspection without first obtaining a warrant, and may not punish him for not allowing access without a warrant. Just as was the case with the San Francisco ordinance under which the city prosecuted Mr. Camara, and which he successfully had this Court

facially invalidate, any similar ordinance is facially unconstitutional.

Yet, even though this Court could not have been more clear than it was in *Camara*, cities often do adopt ordinances creating regulatory programs that mandate warrantless, nonconsensual inspections and punish residents and landlords for refusing an inspection.

For example, Lowell, Massachusetts mandates rental properties be licensed, and one of the requirements for a license is "the satisfactory result of an inspection by a City code enforcement inspector." City of Lowell Code § 176-2(B).[4] The code provides for no warrant procedure. It simply mandates an inspection in order to obtain a license. And renting without a license is an offense. *Id.* § 176-3(B) (fine of up to $300 for every day found to be in violation). Thus, the choice is between waiving a Fourth Amendment right and prosecution. Similar examples abound from coast to coast. *See, e.g.*, Coatesville, Pennsylvania Code § 136-14.1(H)[5] (mandatory inspections with no warrant procedure); Joliet, Illinois Code § 8-154[6] (same); Ontario, California Municipal Code § 8-17-109[7] (same).

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[4] The code is available at http://ecode360.com/12360647.

[5] *Available at* http://ecode360.com/9633639.

[6] *Available at* https://www.municode.com/library/il/joliet/codes/code_of_ordinances.

[7] *Available at* http://www.amlegal.com/ontario_ca/.

All of these ordinances are *per se* unconstitutional. They require exactly the same kind of warrantless, nonconsensual searches found facially unconstitutional in *Camara*. Residents should therefore be able to challenge these laws on their face and obtain an injunction protecting the plaintiff and every other resident of those cities.

C. Facial challenges have enabled law-abiding citizens to protect the privacy and sanctity of their homes from laws that authorize warrantless, nonconsensual inspections.

Fortunately, through the use of facial challenges, both residents and landlords have invalidated some of these programs. A few of these cases are discussed in this section.

In *Dearmore v. City of Garland*, 400 F. Supp. 2d 894, 900-01 (N.D. Tex. 2005), a landlord and a tenant challenged their city's rental licensing ordinance which required owners of rental housing to license their properties, and established that to obtain a license, the owners had to submit to an annual inspection. The plaintiffs filed suit shortly after the ordinance was adopted and moved for a preliminary injunction, arguing the ordinance violated the Fourth Amendment on its face.

The district court granted the motion, finding that the ordinance was facially unconstitutional. *Id.* at 904, 904 n.8. The ordinance unconstitutionally

lacked a provision requiring the city to obtain a warrant if a tenant or landlord refused entry. As the court put it:

> The court determines that in order to comply with the requirements of *Camara* and the protections of the Fourth Amendment, the Ordinance must give the landlord the opportunity to refuse to consent and include a warrant procedure to be followed in the event the landlord refuses.

Id. at 904.

A similar story occurred in Freeport, New York, where a coalition of landlords filed an action, this time in state court, to have a warrantless rental inspection program declared unconstitutional under the Fourth Amendment. *Sokolov v. Freeport*, 420 N.E.2d 55, 57 (N.Y. 1981) (declaring inspection requirement unconstitutional because landlords are forced to give up constitutional right to demand a warrant in exchange for being able to rent out their property). The New York Court of Appeals held the ordinance unconstitutional on its face because it forbade any landlord from renting her property if she did not submit to a warrantless inspection.[8]

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[8] Many of these facial challenges never make it to a decision, but nevertheless are an indispensable tool of protecting Fourth Amendment liberties. Many times cities have adopted unconstitutional rental inspection ordinances, tenants and landlords have filed suit, and the cities have then amended the law before a court decision. If it were not for the lawsuits, however,

(Continued on following page)

Facial challenges to warrantless inspection programs are not just essential to protecting the Fourth Amendment rights of tenants and landlords, but of resident homeowners as well. Many jurisdictions require "point of sale" inspections, where a house must be inspected before title can transfer to a buyer. Courts, relying upon *Camara*, have found programs such as these that do not contain warrant provisions to be facially unconstitutional, and have enjoined their enforcement. *See Wilson v. Cincinnati*, 346 N.E.2d 666, 671 (Ohio 1976); *Hometown Co-operative Apartments v. City of Hometown*, 495 F. Supp. 55, 60 (N.D. Ill. 1980).

Only facial challenges to these ordinances can prevent them from being enforced. As-applied victories, as opposed to facial victories, in individual cases will allow the ordinances to continue to be enforced

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these cities very well would have continued to demand warrantless, nonconsensual home inspections. *See, e.g.*, Betsy Bloom, *Judge Delays Ruling on City, Landlords Dispute*, La Crosse (Wis.) Tribune, Aug. 19, 2014, *available at* http://lacrossetribune.com/news/local/judge-delays-ruling-on-city-landlords-dispute/article_1277cdfa-b51a-5dc7-bb81-6e89a03db629.html (reporting a judge was set to strike down an inspection ordinance until the city quickly removed the offending language); Eileen Zaffiro-Kean, *Daytona Rental Inspection Law Gets Addition*, Daytona Beach News-Journal, Oct. 15, 2014, *available at* http://www.news-journalonline.com/article/20141015/NEWS/141019570; Larry Barszewski, *Lauderdale Lakes Repeals Rental Inspection Program*, Sun-Sentinel (South Florida), June 23, 2013, *available at* http://articles.sun-sentinel.com/2013-06-23/news/fl-lakes-repeals-rental-program-20130623_1_inspection-program-annual-inspections-lauderdale-lakes.

against everyone but the successful tenant or landlord. The next victim will likely be a different tenant or landlord who knows nothing of the former case and who cannot afford their own counsel while the city either denies the landlord a license or takes the license away and evicts the tenant from his home.

If this Court abandons Fourth Amendment facial challenges it would mean every resident or landlord who wanted to challenge a warrantless inspection requirement would have to either violate the law and subsequently endure a prosecution, license revocation, or eviction proceeding, or have to file an as-applied pre-enforcement challenge that would result in nothing more than a declaratory judgment or injunction pertaining to their rights only. A judge faced with an obviously unconstitutional law before him could do no more than forbid its enforcement against the resident and landlords in that individual case. Cities could enforce these laws knowing that the worst that could happen is they would be stopped in an individual enforcement action. This Court should not allow this to happen by taking away facial invalidation under the Fourth Amendment.

II. Fourth Amendment Facial Challenges Are Proper as a Matter of History, Law, and Practice.

In arguing that facial challenges should not be available under the Fourth Amendment, the City and its *amici* emphasize certain analysis by this Court

disfavoring facial challenges in general and this Court's refusal nearly five decades ago in *Sibron v. New York*, 392 U.S. 40 (1968) to rule on the facial validity of a state stop-and-frisk statute. *See, e.g.*, Pet'r's Br. 21-24; Brief of *Amicus Curiae* Manhattan Institute 30-31. In their view, the fleeting statements in *Sibron* completely foreclose Respondents' facial claim.

But an examination of the history and purpose of the Fourth Amendment, this Court's Fourth Amendment jurisprudence, and the practice of how facial challenges actually function support facial enforcement of the provision. The Fourth Amendment was adopted to prohibit both certain nefarious searches, seizures, and warrants, *and* legislation authorizing those searches, seizures, and warrants. Further, this Court's Fourth Amendment jurisprudence, both before and after *Sibron*, not only permits facial challenges but invites them in appropriate circumstances. This Court has specifically authorized Fourth Amendment facial claims over other forms of relief. It, and lower courts, have adjudicated Fourth Amendment facial claims many times, and in doing so have demonstrated three areas particularly suitable to facial challenges involving warrantless searches. Finally, facial challenges under the Fourth Amendment can be adjudicated without risking an advisory opinion or decision of an unripe case, thus obviating the concerns raised by this Court in *Sibron*, the Sixth Circuit, and Judge Tallman in his dissent in this matter. *See Sibron*, 392 U.S. at 58-62; *Patel v. City of Los Angeles*, 738 F.3d 1058, 1065-67, 1070 (9th Cir. 2013)

(Tallman, J., dissenting); *see also Warshak v. United States*, 532 F.3d 521, 525-34 (6th Cir. 2008) (*en banc*). These concerns arise from a misunderstanding of what makes facial and as-applied challenges distinct. Facial challenges are not challenges without facts. They are challenges with a broader *remedy* than as-applied challenges.

A. The history and purpose of the Fourth Amendment support the ability to make facial challenges.

Under this Court's jurisprudence, any analysis of the Fourth Amendment must "begin with history." *Virginia v. Moore*, 553 U.S. 164, 168 (2008). And that history demonstrates that the Amendment was intended to prohibit the legislature from authorizing unreasonable searches and seizures, not just to prohibit the executive from performing them. Thus, facial challenges against offending legislation are a proper means to enforce the Fourth Amendment's purpose.

As is well recognized, one of the Amendment's primary goals was to prohibit general warrants similar to the hated writs of assistance "under which officers of the Crown bedeviled the colonists." *Stanford v. Texas*, 379 U.S. 476, 481 (1965). "Opposition to such searches," in turn, was "one of the driving forces behind the Revolution itself." *Riley v. California*, 134 S. Ct. 2473, 2494 (2014).

But the writs of assistance did not spring from a vacuum. Rather, it was several Acts of Parliament[9] including "[t]he Townshend Act [that] vested the power to issue writs of assistance in American judges." *State v. Ochoa*, 792 N.W.2d 260, 271 (Iowa 2010). Resistance to the writs of assistance thus naturally extended to resistance to their authorizing legislation. For example, during his famous 1761 speech in a Boston courtroom, James Otis criticized writs of assistance as "a power that place[d] the liberty of every man in the hands of every petty officer."[10] Otis then observed that "[n]o Acts of Parliament can establish such a writ. 'An act against the constitution is void.'"[11] Otis finally emphasized that it was "the business of th[e] court to demolish this monster of oppression."[12]

The Fourth Amendment was targeted not so much at illegal searches but at legislation such as the Townshend Act that might authorize them. For example, James Madison urged adoption of the Bill of Rights in order to prohibit Congress from enacting

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[9] *See* 2 *Legal Papers of John Adams* 131-32 (L. Kinvin Wroth & Hiller B. Zobel, eds., Harvard Univ. Press 1965) (identifying the relevant Acts of Parliament).

[10] *See id.*, at 141-42.

[11] *Id.* at 144. By "constitution," Otis was referring to British common law tradition, such that "when an Act of Parliament is against Common Right and Reason . . the Common Law shall control it, and adjudge it to be void." *Id.* at 128 n.21 (internal citations & annotations omitted); *see also id.* at 144 & n.46.

[12] *Id.*

similar legislation authorizing general warrants. Madison explained that "'[t]he General Government has a right to pass all laws which shall be necessary to collect its revenue'" and "'the means for enforcing the collection are within the direction of the Legislature'" – meaning that "'general warrants [could] be considered necessary for this purpose.'" *G. M. Leasing Corp. v. United States*, 429 U.S. 338, 355 (1977) (quoting 1 Annals of Cong. 438 (1834 ed.)). This led Madison to argue that "'[i]f there was reason for restraining the State Governments from exercising this power, there is like reason for restraining the Federal Government.'" *Id. See also* Thomas Y. Davies, *Recovering the Original Fourth Amendment*, 98 Mich. L. Rev. 547, 657-60 (1999) (demonstrating that the Framers were not concerned that general warrants themselves might be upheld under prevailing common law, but that future legislation might make them legal, and therefore that they intended the Fourth Amendment to prevent legislation authorizing general warrants).

Madison and his fellow Framers would not have pushed for the Fourth Amendment's adoption so it would only apply to individual general warrants but have nothing to say about the underlying legislation authorizing them. As Madison's comments make clear, the Constitution needed to prohibit legislation authorizing general warrants just as it needed to prohibit general warrants themselves. Therefore, upon the Fourth Amendment's adoption, legislation could

violate the Constitution just as individual searches, seizures, and warrants could.

In turn, today we should understand facial challenges as a logical means of furthering the Amendment's purpose of invalidating legislation that authorizes unconstitutional searches, seizures, and warrants. Whether an individual statute or ordinance is facially unconstitutional, or whether it only could be found unconstitutional as applied to certain instances, will depend on individual cases. But in at least certain categories, including those involving warrantless, nonconsensual home inspections discussed above in Part I, facial challenges are completely consistent with the Fourth Amendment's origins.

B. This Court's precedents openly invite Fourth Amendment facial challenges, and make facial review particularly appropriate in several areas.

This Court has specifically authorized Fourth Amendment facial challenges in two different ways. First, it has explicitly stated that facial challenges are allowed because they are the primary deterrent against legislatures enacting laws that violate the Fourth Amendment. Second, it has repeatedly found individual laws to facially violate the Fourth Amendment, and in so doing has demonstrated facial adjudication to be particularly appropriate in three different areas involving warrantless searches.

1. In *Illinois v. Krull* this Court explicitly approved Fourth Amendment facial challenges to the exclusion of other remedies.

Facial challenges under the Fourth Amendment are not only proper, but this Court has embraced them to the exclusion of other remedies. In *Illinois v. Krull*, this Court reviewed a motion to suppress in a state prosecution of the operators of an automobile wrecking yard. 480 U.S. 340, 344-45 (1987). The evidence at issue had been obtained in a warrantless search of the wrecking yard pursuant to a state statute. *Id.* at 343. However, literally the day following the search, in a completely separate action involving other operators, a federal court found the statute unconstitutional on its face. *Id.* at 344 (citing *Bionic Auto Parts & Sales, Inc. v. Fahner*, 518 F. Supp. 582 (N.D. Ill. 1981), *aff'd in part, vacated in part, and remanded in part*, 721 F.2d 1072 (7th Cir. 1983)).[13] The question before the Court was whether the evidence was admissible because the officer had relied upon the statute's constitutionality in good faith. *Id.* at 346.

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[13] The statute's constitutionality was not before the Court in *Krull*. The federal district court's ruling was appealed, but while the appeal was pending the Illinois legislature amended portions of the statute. In its appeal decision the Seventh Circuit stated that the amendments had cured some of the statute's constitutional defects, including the one at issue in *Krull*. *Bionic Auto Parts & Sales*, 721 F.2d at 1075.

This Court concluded the evidence was admissible because the purpose of the exclusionary rule – deterrence – was not present. It reasoned that an officer cannot be expected to be deterred to follow a statute if the statute is ruled unconstitutional *after* the search in question. *Id.* at 349-50. This would be "'[p]enalizing the officer for the [legislature's] error, rather than his own.'" *Id.* at 350 (quoting *United States v. Leon*, 468 U.S. 897, 921 (1984)) (second bracket in original). And, the Court also concluded that legislatures themselves would not be deterred from enacting laws violating the Fourth Amendment through the exclusionary rule because of the various, and general, incentives legislatures have. *Id.* at 352.

Instead, the Court declared that what would deter legislators from enacting laws that violate the Fourth Amendment was allowing facial challenges:

> Thus, it is logical to assume that the greatest deterrent to the enactment of unconstitutional statutes by a legislature is the power of the courts to invalidate such statutes. Invalidating a statute informs the legislature of its constitutional error, affects the admissibility of all evidence obtained subsequent to the constitutional ruling, and often results in the legislature's enacting a modified and constitutional version of the statute, as happened in this very case.

Id. at 352. This Court then plainly stated that "a person subject to a statute authorizing searches without a warrant or probable cause may bring an action

seeking a declaration that the statute is unconstitutional and an injunction barring its implementation." *Id.* at 354.

This is *exactly* what Respondents are doing in this case. If this Court concludes Respondents cannot bring a facial claim under the Fourth Amendment it will be overturning this crucial reasoning from *Krull*.

2. Fourth Amendment facial challenges are particularly appropriate in a few areas where purely legal questions predominate.

Given that this Court has explicitly sanctioned facial enforcement of the Fourth Amendment, it is unsurprising that this Court and many lower courts have repeatedly decided, on the merits, Fourth Amendment facial claims or class actions tantamount to facial claims. *See, e.g.*, *Skinner v. Ry. Labor Execs.' Ass'n*, 489 U.S. 602 (1989) (deciding, on Fourth Amendment grounds, a facial challenge to blood/urine tests of railway employees); *Marshall v. Barlow's, Inc.*, 436 U.S. 307 (1978) (declaring federal statute providing for warrantless, nonconsensual searches of businesses violated the Fourth Amendment on its face); *Camara*, 387 U.S. at 534; *Berger v. New York*, 388 U.S. 41, 54-56 (1967) (deciding whether state wiretap statute on its face violated the Fourth Amendment for lack of constitutionally-required safeguards); *see also, e.g.*, *Doe ex rel. Doe v. Little Rock Sch. Dist.*, 380 F.3d 349 (8th Cir. 2004) (deciding

class action that challenged established school search policy under the Fourth Amendment); *Pentco, Inc. v. Moody*, 474 F. Supp. 1001, 1009 (S.D. Ohio. 1978) (holding ordinance authorizing warrantless inspection of massage parlors unconstitutional and enjoining its enforcement); *Haw. Psychiatric Soc. v. Ariyoshi*, 481 F. Supp. 1028, 1052 (D. Haw. 1979) (declaring medical records inspection law facially unconstitutional and enjoining its enforcement); *Sokolov v. Freeport*, 420 N.E.2d 55, 57 (N.Y. 1981) (declaring rental housing inspection ordinance facially unconstitutional).

Based on this precedent, laws authorizing warrantless searches are particularly open to facial review under the Fourth Amendment on at least one of three grounds. All of these call for legal analysis not beholden to a particular factual scenario, and all serve the interests of both individuals and the justice system through obtaining a definitive answer that legislators, individuals, and government actors can then rely upon. These interests are served both when a law is declared unconstitutional and constitutional. In either case the public is given a definitive answer.

First, laws may be facially challenged where they fail to evince a bare compliance with this Court's precedents regarding warrantless searches. For example, this past term in *Riley v. California*, this Court held that: "Our answer to the question of what police must do before searching a cell phone seized incident to an arrest is simple – get a warrant." 134 S. Ct. at 2495. Now if the California legislature were to enact

a law tomorrow authorizing the warrantless search of any cell phone incident to arrest, such a law would be open to facial attack on the grounds that it abridged this Court's controlling interpretation of the Fourth Amendment in *Riley*. *See Marshall*, 436 U.S. at 313 (declaring warrantless search statute facially unconstitutional as it did not comply with holdings in *Camara* and *See v. City of Seattle* and finding no additional exception to warrant requirement); *see also Marbury v. Madison*, 5 U.S. 137, 177 (1803) ("It is emphatically the province and duty of the judicial department to say what the law is."). Likewise, a law authorizing warrantless searches is open to facial challenge where it is not based on an exception to the warrant requirement recognized by the Court. *See Patel v. City of Los Angeles*, 686 F.3d 1085, 1091 (9th Cir. 2012) (Pregerson, J., dissenting) (finding that Los Angeles's guest-registry-search law was not supported by any established exception to the warrant rule).

Second, laws authorizing warrantless searches are open to facial review to the extent they rest on a recognized exception to the warrant requirement whose elements are capable of adjudication before any search has taken place. An example is the question of whether a business is subject to the "closely regulated business" exception to the warrant requirement. Even Petitioner concedes this point, observing that "courts are capable of making some Fourth Amendment determinations without any case-specific facts" and then citing the test established by this Court in *New*

York v. Burger, 482 U.S. 691 (1987) for warrantless administrative inspections of closely regulated businesses. Pet'r's Br. 28 ("These determinations are made solely by looking to the language and legislative history of the statute and the history of the regulation of the industry, *not by considering the facts of any particular search*." (emphasis added)). This point is also reflected by a case like *Chandler v. Miller*, 520 U.S. 305, 323 (1997) where this Court made clear that laws authorizing warrantless searches under the "special needs" exception to the warrant requirement must rest on a "substantial and real" risk to public safety. The Court accordingly invalidated a Georgia statute that required all candidates for state office to take a drug test where it was clear that "the statute was not enacted in response to any fear or suspicion of drug use by state officials" – a fact that long preexisted any actual enforcement of the law. *Id.* at 319.

Third, laws authorizing warrantless searches are open to facial review to the extent they delegate too much discretion to law enforcement, thus placing "the liberty of every man in the hands of every petty officer." *Payton v. New York*, 445 U.S. 573, 584 n.21 (1980) (facially invalidating a New York statute allowing for felony arrests in a home without a warrant). For example, this Court has refused to adopt a judicial rule that would allow the search of a vehicle whenever a person commits a traffic offense. *Arizona v. Gant*, 556 U.S. 332 (2009). This is because it allows the inspecting officer unbridled discretion to rummage through property having nothing to do with the

offense. *Id.* And where the same problem is raised by a warrantless-search-authorizing law, the law "is unconstitutional, not because a policeman applied this discretion wisely or poorly in a particular case, but rather because the policeman enjoys too much discretion in *every* case." *City of Chicago v. Morales*, 527 U.S. 41, 71 (1999) (Breyer, J., concurring) (emphasis in original).

C. Fourth Amendment facial challenges can be decided without the risk of an advisory opinion or an unripe case.

In adjudicating facial challenges, courts decide whether a statute or ordinance should be enforced beyond just the individuals or businesses before them, thus "tak[ing] into account possible applications of the statute in other factual contexts besides that at bar." *NAACP v. Button*, 371 U.S. 415, 432 (1963). Again, it is entirely proper for courts to do this, just as when litigants invoke other provisions of the Bill of Rights. *See, e.g.*, *United States v. Stevens*, 559 U.S. 460, 482 (2010) (statute facially violated the First Amendment); *District of Columbia v. Heller*, 554 U.S. 570, 635 (2008) (ordinance facially violated the Second Amendment); *Aptheker v. Sec'y of State*, 378 U.S. 500, 514 (1964) (statute facially violated the Fifth Amendment); *United States v. Booker*, 543 U.S. 220, 248 (2005) (statute facially violated the Sixth Amendment).

Nevertheless, in *Sibron v. New York*, this Court refused to engage in the purportedly "abstract and

unproductive exercise" of "pronounc[ing] on the facial constitutionality" of a state stop-and-frisk statute. 392 U.S. 40, 59, 61 (1968). The Court observed that "[t]he constitutional validity of a warrantless search is pre-eminently the sort of question which can only be decided in the concrete factual context of the individual case." *Id.* And based on this concern, the Sixth Circuit and a member of the Ninth Circuit in dissent have expressed concerns about the justiciability of Fourth Amendment facial challenges in general.

In *Warshak v. United States*, the Sixth Circuit held that the ripeness doctrine prevented it from deciding a facial Fourth Amendment challenge to a law that allowed the government to obtain *ex parte* orders forcing internet service providers to produce their subscribers' e-mails. 532 F.3d 521, 523 (6th Cir. 2008). The Sixth Circuit found that this challenge was not ripe for review – even though the plaintiff had already been searched two previous times under the law – because the court needed a more developed record to address the "complex factual issues" raised by plaintiff's claim. *Id.* at 527-28 (noting the court needed more facts about, for example, "the variety of internet-service agreements and the differing expectations of privacy that come with them").

In addition to the Sixth Circuit's concern about the ripeness of Fourth Amendment facial challenges, Judge Tallman of the Ninth Circuit has concluded that such challenges call for advisory opinions. Dissenting from the en banc decision in this case, Judge

Tallman stated that the Fourth Amendment facial challenge could not be decided because it forced the court to engage "in the gymnastics of the hypothetical" and render a decision "rife with assumptions about the police conduct that must occur for the ordinance to be applied." *Patel*, 738 F.3d 1058, 1066 (9th Cir. 2013) (Tallman, J., dissenting). This was because, explained Judge Tallman, the record was devoid of facts demonstrating how the ordinance was applied. *See id.* at 1068.

The Court should not find the Sixth Circuit's concerns in *Warshak* nor Judge Tallman's concerns in *Patel* persuasive. Fourth Amendment facial claims are wholly justiciable: they do not require the kind of hypothetical gymnastics described by Judge Tallman in *Patel*, nor do they require courts to settle for a barebones factual record on issues the court deems vital to adjudication of the broader claim.

Both the Sixth Circuit and Judge Tallman – and perhaps this Court in *Sibron* – appear to have overlooked the actual legal distinction between facial and as-applied challenges. The difference between facial and as-applied challenges is "the breadth of the remedy employed by the Court." *Citizens United v. FEC*, 558 U.S. 310, 331 (2010). The difference is *not* that facial challenges ignore facts while as-applied challenges develop them. And the difference is *not* that facial challenges can only be made in a pre-enforcement context – where standing and ripeness may be more tenuous – while as-applied claims arise in the *post hoc* context of prosecutions or actions for

damages following an actual search. *See Warshak*, 532 F.3d at 528 (observing that Fourth Amendment claims usually arise via a suppression motion in a criminal case or a suit for damages).

To the contrary, facial challenges can involve a weighty record containing numerous facts. *See, e.g.*, *McConnell v. FEC*, 540 U.S. 93 (2003) (reviewing challenge to Bipartisan Campaign Reform Act that involved a voluminous record).[14] Facial challenges can also be made in a post-enforcement context where standing and ripeness are unassailable. *See, e.g.*, *Camara v. Municipal Court*, 387 U.S. 523 (1967) (declaring ordinance facially unconstitutional in response to criminal defendant's writ of prohibition). And Plaintiffs can raise as-applied pre-enforcement challenges. *See, e.g., Gonzales v. Carhart*, 550 U.S. 124, 167-68 (2007) (rejecting facial challenge to abortion statute, but allowing pre-enforcement as-applied challenges). For example, Respondents originally brought a pre-enforcement, as-applied challenge in this case. *Patel*, 738 F.3d at 1066 (Tallman, J., dissenting).

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[14] Petitioner and its *amici* make much out of Respondents having proffered no evidence at the trial in this case. *See, e.g.*, Pet'r's Br. 51; Brief of *Amicus Curiae* United States 17-18. However, that decision was only made because Petitioner agreed with Respondents to "put the as-applied damages claims on hold by dismissing them without prejudice and tolling the statute of limitations" for reasons of judicial economy. Resp't's Br. 5. Petitioner's attempt to now use this mutual decision against Respondents should not color whether this Court disallows anyone from ever making a Fourth Amendment facial challenge again.

Had they pursued it at trial, that claim would have concerned whether the challenged ordinance was unconstitutional *as applied to Respondents*, and whether the Court should issue an injunction forbidding Petitioner from enforcing the ordinance *against Respondents*. The facial claim before this Court involves the same analysis, but instead asks whether the ordinance is unconstitutional *in general* and whether the Petitioner should thus be enjoined from enforcing the ordinance against *anyone*.

It is for this reason that "[w]hen asserting a facial challenge, a party seeks to vindicate not only his own rights, but those of others who may also be adversely impacted by the statute in question." *City of Chicago v. Morales*, 527 U.S. 41, 55 n.22 (1999). Facial challenges are thus a vital tool in our constitutional order because if courts could only provide as-applied relief, then courts would be generally unable to prevent the enforcement of unconstitutional laws. If a law authorizes otherwise unconstitutional searches and a court finds that the law as applied to a given citizen violates the Fourth Amendment, there is nothing to prevent the city from enforcing the law against the next person, and the next. Only if the case makes its way to an appellate court could the matter have a direct effect beyond that citizen, and even there it entirely depends on the scope of the appellate court's language.

There is nothing special about the Fourth Amendment that lessens these concerns in the search and seizure context. For example, if an ordinance allows

for warrantless, nonconsensual searches of home, and this Court has categorically held that such an ordinance is unconstitutional, it makes no sense to forbid lower courts from declaring similar ordinances unconstitutional on their face and forbidding their enforcement against people other than the individuals before the Court. Such an unconstitutional law demands such a remedy. As the Ninth Circuit found, the same is true in the context of warrantless inspections of hotel records.

CONCLUSION

No law-abiding citizen should be forced to wait until the police or a government inspector comes knocking at their door demanding to search without a warrant before challenging their authority. And no court should be prevented from generally invalidating a law, and preventing its future enforcement, which unquestionably violates the Constitution. This Court should therefore make clear that facial challenges are available under the Fourth Amendment.

Respectfully submitted,

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AMICUS CURIAE BRIEF

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No. 13-1175

IN THE
SUPREME COURT OF THE UNITED STATES

CITY OF LOS ANGELES,
Petitioner,

v.

NARANJIBHAI PATEL, ET AL.
Respondents.

On Writ of Certiorari to the United States Court of Appeals for the Ninth Circuit

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BRIEF OF *AMICI CURIAE* – PROFESSORS ADAM LAMPARELLO AND CHARLES E. MACLEAN IN SUPPORT OF THE RESPONDENT

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INTEREST OF *AMICI CURIAE*

Amici Curiae Adam Lamparello and Charles E. MacLean[1] are assistant professors of law at Indiana Tech Law School in Fort Wayne, Indiana. They teach and write in the areas of criminal and constitutional law, and have an interest in the principled development of the law in this area. Professors Lamparello and MacLean respectfully submit that the Court's decision in this case will affect citizens' privacy rights in a variety of contexts and have implications for the continuing viability of the third-party doctrine.

Together or separately, *Amici* have written numerous articles in the area of Fourth Amendment jurisprudence, including: Adam Lamparello, *City of Los Angeles v. Patel: The Upcoming Supreme Court Case No One is Talking About,* 20 TEX. J. C.R. & C.L. (forthcoming 2015); Adam Lamparello, *The Internet is the New Marketplace of Ideas: Why Riley v. California Supports Net Neutrality,* 25 DEPAUL J. ART, TECH. & INTELL. PROP. L. (forthcoming 2015);

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[1] Counsel for Petitioner City of Los Angeles consented to the filing of this brief. Counsel for respondents Naranjibhai Patel, *et al.* did not respond to our request for consent, although counsel for both parties submitted written consent to the filing of briefs in support of either party or neither party. No counsel for any party authored this brief in whole or in part, and no counsel or party made a monetary contribution intended to fund the preparation or submission of this brief. No person other than the amici curiae, their law school, or their counsel made a monetary contribution to its preparation or submission.

Charles E. MacLean, *Katz on a Hot Tin Roof: The Reasonable Expectation of Privacy Doctrine is Rudderless in the Digital Age Unless Congress Continually Resets the Privacy Bar*, 24 ALB. L.J. SCI. & TECH. 47 (2014); Charles E. MacLean & Adam Lamparello, *Abidor v. Napolitano: Suspicionless Cell Phone and Laptop "Strip" Searches at the Border Compromise the Fourth and First Amendments*, 108 NW. U. L. REV. ONLINE 280 (2014); Charles E. MacLean & Adam Lamparello, *Riley v. California: The New Katz or Chimel?*, 21 RICHMOND J.L. & TECH. 1 (2014); Adam Lamparello & Charles E. MacLean, *Back to the Future: Returning to Reasonableness and Particularity under the Fourth Amendment*, 99 IOWA L. REV. BULL. 101 (2014); and Charles E. MacLean, *But Your Honor, A Cell Phone is Not a Cigarette Pack: An Immodest Call for a Return to the Chimel Justifications for Searches of Cell Phone Memories Incident to Lawful Arrest*, 6 FED. CTS. L. REV. 37 (2012).

SUMMARY OF ARGUMENT

In Los Angeles, if the owner of the Beverly Hills Hotel refuses to allow law enforcement to inspect the hotel's guest registry, he or she may spend a few nights in the Los Angeles County Jail awaiting trial on charges that can result in six months' imprisonment and a stiff fine. *See Patel v. City of Los Angeles*, 738 F.3d 1060, 1062 (9th Cir. 2013) (a violation of Los Angeles Municipal Code Section 41.49 is a misdemeanor "punishable by up to six months in jail and a $1000 fine") (citing L.A. Mun. Code § 11.00(m)).

If a hotel *guest* objected, law enforcement officers would simply say, "sorry, but you checked your Fourth Amendment rights at the door." The officers would be correct. The third-party doctrine, which states that individuals forfeit all privacy protections upon disclosing information to a third-party, prohibits the hotel guests from asserting any expectation of privacy in their personal information. And Section 41.49 gives law enforcement officers the authority—without any judicial oversight whatsoever—to march into the lobby of the Beverly Hills Hotel without a warrant and discover, *inter alia*, the names, room and license plate numbers, and arrival and departure dates of every guest in the hotel's 208 luxurious rooms. [2]

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[2] *See Patel*, 738 F.3d at 1060. Under Section 41.49, guest registries must contain the following:

Underscoring the infringement of the hotel guests' privacy rights is the fact that, when the guests initially reserved a room at the Beverly Hills hotel, they were *required* to disclose their name, address, and license plate number. In the context of metadata collection, one could at least make the argument, however implausible, that citizens can choose not to use their cell phones or to surf the internet. The same cannot be said for citizens who are traveling by car on an unseasonably chilly evening in Los Angeles and need a place to sleep, except for those who would be willing to sleep—and shiver—in the back seat.

Of course, some might argue that hotel guests can protect their privacy simply by using an alias. Citizens should not have to go incognito—or sleep in their vehicles—to enjoy basic Fourth Amendment protections. *See generally Katz v. United States,* 389 U.S. 347, 361 (1967) (Harlan, J., concurring) (to trigger Fourth Amendment protections, an individual must have "exhibited an actual (subjective) expectation of privacy and, second, that the

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The guest's name and address; the number of people in the guest's party; the make, model, and license plate number of the guest's vehicle if the vehicle will be parked on hotel property; the guest's date and time of arrival and scheduled date of departure; the room number assigned to the guest; the rate charged and the amount collected for the room; and the method of payment. *Id.* (citing § 41.49(2)(a)).

expectation be one that society is prepared to recognize as 'reasonable'").

Simply put, a hotel owner's expectation of privacy in a guest registry is only the tip of the Fourth Amendment iceberg. The continuing viability of the third-party doctrine in an era characterized by sweeping and indiscriminate searches that reveal, among other things, the identity and physical location of citizens throughout the United States, is where the rubber meets the constitutional road.

Indeed, focusing solely on whether a hotel owner has a reasonable expectation of privacy in a guest registry is tantamount to asking whether Verizon Wireless has a reasonable expectation of privacy in its customer lists. Regardless of the answer to this question, the sixty-four-thousand-dollar question—and the elephant in the room—is whether hotel *guests*, cell phone *users*, and internet *subscribers* automatically forfeit their privacy rights simply by checking into the Beverly Hills Hotel, calling their significant others from a Smartphone while driving on the Santa Monica Freeway, or sending an email to their best friend from Yahoo.

Although this case does not involve digital era technology, the Court's answer to this question—if it decides to reexamine the third-party doctrine—will have implications for the constitutionality of the National Security Agency's ("NSA") metadata collection program and the privacy rights of millions of citizens. *See, e.g.,* Electronic Frontier Foundation,

How the NSA's Domestic Spying Program Works, available at: https://www.eff.org/nsa-spying/how-it-works (broadly describing the National Security Agency's surveillance techniques).

After all, if citizens have no reasonable expectation of privacy in the information contained in a hotel guest registry, what principle would prohibit the Government from collecting cell phone metadata, which typically reveals a user's outgoing phone calls but does not disclose the user's identity?[3]

Nothing.

Surely not the Fourth Amendment. And that, in a nutshell, is the problem.

The Ninth Circuit relied on this Court's precedent, however, to hold that hotel guests have no expectation of privacy in a guest registry. *See Patel,* 758 F.3d at 1062 ("[t]o be sure, the guests lack any privacy interest of their own in the hotel's records") (*citing Smith v. Maryland,* 442 U.S. 735 (1979) (upholding law enforcement's use of a pen register to

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[3] *See In re Application of F.B.I.*, No. BR 14-01, 2014 WL 5463097, at *8 (F.I.S.A. Ct. Mar. 20, 2014). (cell phone metadata collection does not reveal "subscriber names or addresses or other identifying information," which can only be "accessed for analytical purposes after the NSA has established a reasonable articulable suspicion that the number used to query the data—the 'seed'—is associated with one of the terrorist groups listed in the Order").

monitor outgoing calls from a private residence); *United States v. Miller*, 425 U.S. 435 (1976) (holding that citizens have no expectation of privacy in deposit slips and checks given to a bank teller). *Amici* respectfully submit that, while the Ninth Circuit correctly invalidated Los Angeles Municipal Code Section 41.49, it erred in this respect. If Section 41.49 is upheld *or* if the Ninth Circuit's approval of the third-party doctrine is left undisturbed, the Government will almost certainly be able to continue tracking outgoing calls from the cell phones of millions of unsuspecting citizens, including those who call their significant others from a cell phone on First Street Northeast and who perform a Google search from a laptop computer on the Metro in Washington, D.C.[4]

The Court's recent jurisprudence suggests that these practices violate the Fourth Amendment, and that the third-party doctrine's days are numbered. In fact, in *Riley v. California*, 134 S. Ct. 2473 (2014), and *United States v. Jones*, 132 S. Ct. 945 (2012), the Court began to chip away at the third-party doctrine. In holding that law enforcement officers could not search an arrestee's cell phone without a warrant or demonstrable exigency, the *Riley* Court implicitly

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[4] *See* Washington Post, *The NSA May Be Reading Your Searches But Your Local Police Probably Aren't*, (Aug. 3, 2013), available at: http://www.washingtonpost.com/blogs/the-switch/wp/2013/08/03/the-nsa-might-be-reading-your-searches-but-your-local-police-probably-arent/ (discussing the warrantless monitoring of citizens' internet search history)

recognized that some information is so private that its voluntary disclosure to a third party does not automatically waive all Fourth Amendment protections. *See Riley,* 134 S. Ct. at 2491 ("A phone not only contains in digital form many sensitive records previously found in the home; it also contains a broad array of private information never found in a home in any form—unless the phone is").

Likewise, in *Jones,* the Court held that the tracking of a suspect's movements in a public place for twenty-eight days with a GPS device constituted a search under the Fourth Amendment. *See Jones,* 132 S. Ct. at 949. Although the Court was divided over whether the Government's conduct constituted a trespass or infringed on the suspect's reasonable expectation of privacy, a majority found that the length of the search was a significant factor. *See Jones,* 132 S. Ct. at 964 (Alito, J., concurring) ("the use of longer term GPS monitoring in investigations of most offenses impinges on expectations of privacy"); 132 S. Ct. at 955 (Sotomayor, J., concurring) (agreeing that long-term monitoring infringes on expectations of privacy).

In addition, several Justices focused on whether the Government's conduct violated a societal, not a subjective or individual, expectation of privacy. *See, Jones,* 132 S. Ct. at 964 (Alito, J., concurring) ("society's expectation has been that law enforcement agents and others would not—and indeed, in the main, simply could not—secretly monitor and catalogue every single movement of an individual's

car for a very long period"); 132 S.Ct. at 955 (Sotomayor, J., concurring) ("the same technological advances that have made possible nontrespassory surveillance techniques will also affect the *Katz* test by shaping the evolution of societal privacy expectations").[5]

Thus, *Riley* and *Jones* rejected the proposition that individuals have no reasonable expectation of privacy concerning "how the Government will use or handle the information after it has been divulged by the recipient." *In re Application of F.B.I.*, 2014 WL 5463097, at *6. In both cases, the Court's reasoning reflected an understanding that, as technology continues to advance at a pace approximating the speed of light, the creation of new doctrines—or the abandonment of old ones—to protect privacy rights must not move at a snail's pace. A significant

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[5] In other words, it may be time for this Court to consider amending the two-prong (subjective and objective) *Katz* reasonable expectation of privacy standard. The first prong (subjective) has caused much of the confusion. Specifically, because it is widely known that the Government collects cell phone metadata and has the ability to monitor internet browsing history, it would be difficult to assert that citizens have an actual, subjective expectation of privacy in such information. This does not mean, however, that these surveillance techniques do not infringe upon an objective, societal expectation of privacy. Thus, it may be time to discard prong one of the *Katz* test, to focus exclusively on whether society has a reasonable expectation of privacy in information such as a hotel guest registry.

component of this doctrinal evolution is abandoning the principle that "secrecy is a prerequisite to privacy," *Jones,* 132 S. Ct. at 957 (Sotomayor, J., concurring), and acknowledging that "privacy is not a discrete commodity, possessed absolutely or not at all." *Smith,* 442 U.S. at 749 (Marshall, J., dissenting).

To be sure, searches of hotel guest registries are of a scope and breadth that *Smith* (pen registers) and *Miller* (paper deposit slips) neither foresaw nor would have countenanced. *See id.* ("[t]hose who disclose certain facts to a bank or phone company for a limited business purpose need not assume that this information will be released to other persons for other purposes"); *see also Klayman v. Obama,* 957 F. Supp. 2d 1, 33 (D.D.C. 2013) ("[t]he Supreme Court itself has long-recognized a meaningful difference between cases in which a third party collects information and then turns it over to law enforcement and cases in which the government and the third party create a formalized policy under which the service provider collects information for law enforcement purposes, with the latter raising Fourth Amendment concerns") (citing *Ferguson v. Charleston*, 532 U.S. 67 (2001)).

There are good reasons to reexamine the third-party doctrine here. As Fourth Amendment challenges to the NSA's metadata collection program continue to divide the federal courts, there will likely come a day in the not-so-distant future where the Court may be forced to decide whether the third-

party doctrine should be applied to sweeping searches like the one at issue here. *See Klayman*, 957 F. Supp. 2d at 35-37 (refusing to apply the third-party doctrine and holding that the NSA's metadata collection program constitutes a search under the Fourth Amendment); *but see ACLU v. Clapper*, 959 F. Supp. 2d 724, 749 (E.D.N.Y. 2014) (reaffirming the third-party doctrine and holding that "an individual has no legitimate expectation of privacy in information provided to third parties"); *United States v. Moalin*, No. 10cr4246 JM, 2013 WL 6079518, at *7–8 (S.D. Cal. Nov. 18, 2013) (applying *Smith* to uphold the NSA's metadata collection program). In addition, reexamining the third-party doctrine now will give the Court an opportunity to provide guidance to lower courts, possibly spur legislation at the federal and state level, and put a stop to practices that infringe privacy on an almost daily basis.

The deleterious effects of the third-party doctrine on privacy rights cannot be understated. Whether it is the warrantless search of a hotel guest registry or the indiscriminate collection of cell phone metadata, the third-party doctrine has become a runaway train that has ushered privacy rights out to pasture the moment an individual discloses information—no matter how private—to a third party. *See, e.g.*, *United States v. Skinner*, 690 F.3d 772 (6th Cir. 2012) (individuals have no expectation of privacy in information transmitted from a pay-as-you-go cell phone); *In re Smartphone Geolocation Data Application*, 977 F Supp. 2d 129, 146 (E.D.N.Y.

2013) ("[g]iven the notoriety surrounding the disclosure of geolocation data cell phone users cannot realistically entertain the notion that such information would (or should) be withheld from federal law enforcement agents searching for a fugitive").

The flaw in the third-party doctrine is "the premise that an individual has no reasonable expectation of privacy in information voluntarily disclosed to third parties." *Jones,* 132 S. Ct. at 957 (Sotomayor, J., concurring). In fact, case law interpreting the third-party doctrine has routinely held that "*all* information voluntarily disclosed to some member of the public for a limited purpose is, for that reason alone, disentitled to Fourth Amendment protection." *Id.* (citing *Smith,* 442 U.S. at 749) (Marshall, J., dissenting); *see also Katz v. United States,* 389 U.S. 347, 351 (1967) ("[w]hat [a person] seeks to preserve as private, even in an area accessible to the public, may be constitutionally protected") (brackets added). In an era of mass surveillance, this principle leaves all citizens vulnerable to systematic and pervasive infringement of privacy rights by state and federal law enforcement officials. Section 41.49 is just one example of what the third-party doctrine has left in its wake.

Ultimately, comparing the use of a pen register to warrantless searches of a hotel guest registry is "like saying a ride on horseback is materially indistinguishable from a flight to the moon." *Riley,*

134 S. Ct. at 2488; *see also Klayman* 957 F. Supp. 2d at 37 ("the *Smith* pen register and the ongoing NSA Bulk Telephony Metadata Program have so many significant distinctions between them that I cannot possibly navigate these uncharted Fourth Amendment waters using as my North Star a case that predates the rise of cell phones"). Both are "ways of getting from point A to point B, but little else justifies lumping them together." *Riley,* 132 S. Ct. at 2488.

Make no mistake: searches of hotel guest registries have the potential to affect every citizen in the United States. Section 41.49 permits law enforcement to march into the lobby of the Beverly Hills Hotel without a warrant—or any suspicion whatsoever—and discover if a Supreme Court Justice is staying in the Sunset Suite or the Presidential Bungalow.

That's not all.

The guest registries would also reveal:

(1) The make, model, and license plate number of the Justice's vehicle;

(2) The length of time the Justice has been staying there, including the Justice's scheduled departure date;

(3) The Justice's room number; and

(4) The number of people staying in the Justice's room.[6]

In fact, armed with the threat of six months' imprisonment and a $1000 fine, law enforcement officers can require hotel owners to disclose the above information about *every* guest staying in every hotel. This should be troubling to every citizen who understands that liberty depends on knowing that the Government cannot constitutionally watch your every move simply because an ordinance purports to permit it or a new intrusive technology enables it.

It gets worse.

Given the lack of judicial oversight, there is no way to determine whether law enforcement is investigating a particular hotel while serving a valid public interest or just picking hotel names out of a hat. It is not difficult to see how the third-party doctrine can lead to significant abuses of privacy protections and violate the Fourth Amendment.

Amici respectfully submit that, although the third-party doctrine need not be abandoned entirely, it should be modified. Instead of focusing on whether an individual has demonstrated an actual and subjective expectation of privacy in a guest registry, the Court should consider the broader societal expectation in keeping citizens' names and locations

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6 *See Patel*, 738 F.3d at 1060.

private. *See Jones*, 132 S. Ct. at 956 (Sotomayor, J., concurring) (discussing "the existence of a reasonable societal expectation of privacy in the sum of one's public movements"). This approach should take into account factors such as the length and intrusiveness of a search, the quantity and quality of data collected, the amount of time that data are kept, and the level of suspicion required to obtain such data. *See id.*

Applying these factors, searches of hotel guest registries unquestionably implicate the privacy rights of hotel guests, not merely the owners. As stated above, these searches allow law enforcement to know where you are sleeping, who you are sleeping with, when you arrived, and when you intend to leave. Surely, the information contained in a hotel guest registry is one that society would reasonably expect to be protected from disclosure absent some degree of suspicion and some quantum of judicial oversight. *See generally Jones,* 132 S. Ct. at 955 (Sotomayor, J., concurring) ("GPS monitoring generates a precise, comprehensive record of a person's public movements that reflects a wealth of detail about her familial, political, professional, religious, and sexual associations").

Accordingly, the Court should hold that hotel guest registries can be searched only if law enforcement has reasonable suspicion of criminal conduct or is faced with exigent circumstances. *See, e.g., Terry v. Ohio*, 392 U.S. 1 (1968); 18 U.S.C. § 2703(d) (requiring the Government to set forth

"specific and articulable facts that there are reasonable grounds to believe that the contents of a wire or electronic communication are relevant and material to an ongoing criminal investigation").

Finally, should the Court decline to directly address the third-party doctrine, it should hold that Section 41.49 is not justified under the administrative records exception. Like the third-party doctrine, the administrative records exception should not be applied to wide-ranging and warrantless searches. Indeed, it is one thing for regulatory officials to inspect a restaurant to make sure that a filet mignon is not being cooked in a room full of fruit flies, but quite another for law enforcement officers to conduct warrantless and suspicionless searches of records that reveal every guest's name and precise location in the hotel.

Lest there be any doubt about the urgency of this issue, one need only look to Justice Alito's prediction in *Jones,* that "even if the public does not welcome the diminution of privacy that new technology entails, they may eventually reconcile themselves to this development as inevitable." 132 S. Ct. at 962 (Alito, J., concurring).

That is a tradeoff that no citizen—and certainly not this Court—should find worthwhile.

ARGUMENT

I. THE THIRD-PARTY DOCTRINE RENDERS INFORMATION DISCLOSED FOR A LIMITED PURPOSE AVAILABLE TO THE GOVERNMENT FOR ANY PURPOSE.

In *Riley*, the Court stated that "privacy comes at a cost." 134 S. Ct. at 2493. The costs that citizens pay for checking into a Los Angeles hotel are far too great, and the protections afforded by the Fourth Amendment far too insubstantial, to adequately protect privacy rights.

As a threshold matter, it is irrelevant that hotel guest registries do not reveal information of "great personal value." *Patel,* 738 F.3d at 1062-63 ("[t]hat the inspection may disclose 'nothing of any great personal value' to the hotel—on the theory, for example, that the records contain 'just' the hotel's customer list—is of no consequence ... '[a] search is a search, even if it happens to disclose nothing but the bottom of a turntable'") (quoting *Arizona v. Hicks,* 480 U.S. 321, 325 (1987)).

What matters is that the Fourth Amendment protects information in hotel guest registries from unreasonable searches and seizures. *See Patel,* 738 F.3d at 1061 ("[t]he 'papers' protected by the Fourth Amendment include business records like those at issue here") (citing *Hale v. Henkel,* 201 U.S. 43, 76–

77 (1906)). Indiscriminate and warrantless searches of this information, however, are anything but reasonable. *See Riley*, 134 S. Ct. at 2482 (reasonableness is the "ultimate touchstone" of the Fourth Amendment) (quoting *Brigham City v. Stuart*, 547 U.S. 398, 403 (2006)).

In *Riley* and *Jones*, this Court began to turn the tide in favor of greater privacy protections, and against the third-party doctrine.

A. Citizens Should Not Forfeit *All* Privacy Rights Whenever They Surrender Information to Third Parties.

The time has arrived to ask "whether people reasonably expect that their movements will be recorded and aggregated in a manner that enables the Government to ascertain, more or less at will, their political and religious beliefs, sexual habits, and so on." *Jones*, 132 S. Ct. at 956 (Sotomayor, J., concurring).

The problem with the third-party doctrine is the notion that "*all* information voluntarily disclosed to some member of the public for a limited purpose is, for that reason alone, disentitled to Fourth Amendment protection." *Id.* at 957 (emphasis added). Such a rule requires citizens to assume the risk that information given to a third party may be accessed by the Government for whatever reason it pleases or even for no reason at all. *See United States v.*

Jacobson, 466 U.S. 109, 117 (1984) ("[i]t is well settled that when an individual reveals private information to another, he assumes the risk that his confidant will reveal that information to the authorities, and if that occurs the Fourth Amendment does not prohibit governmental use of that information").

To begin with, it is difficult to believe that the Court in *Smith* and *Miller* expected or anticipated that the third-party doctrine would one day authorize a sweeping government dragnet that is a far more intrusive—and much less supportable—version of the sobriety checkpoint. *See Michigan Dept. of State Police v. Sitz*, 496 U.S. 444 (1990) (upholding a sobriety checkpoint against a Fourth Amendment challenge where it was targeted to address an enumerated public safety issue, not a general law enforcement interest); *see also Skinner v. Railway Labor Execs. Ass'n*, 489 U.S. 602, 620 (1989) (permitting random drug testing of employees in "safety-sensitive" positions).

Indeed, it would be reasonable for law enforcement to stop motorists at a sobriety checkpoint on New Year's Eve because a substantial portion of citizens indulge in excessive quantities of alcohol and decide to get behind the wheel while intoxicated. The authority to use a sobriety checkpoint on New Year's Eve, however, does not mean that motorists can be forced to stop at general crime interdiction checkpoints 365 days a year in Anywhere, U.S.A., when returning home from work.

In other words, a practice that is constitutional in isolation can become unconstitutional in the aggregate. *See United States v. Knotts*, 460 U.S. 276 (1983) (a person traveling in public has no expectation of privacy in the vehicle's movements); *but see Jones*, 132 S. Ct. at 964 (Alito, J., concurring) ("relatively short-term monitoring of a person's movements on public streets accords with expectations of privacy that our society has recognized as reasonable but the use of longer term GPS monitoring in investigations of most offenses impinges on expectations of privacy").

Similarly, it might be constitutional to inspect a hotel guest registry when the hotel is known to harbor child sex traffickers or drug dealers, or to monitor vehicles that pass through toll booths on public highways. But Section 41.49 is far broader. It gives law enforcement the power to conduct warrantless searches of guest registries at *any* hotel in Los Angeles without any suspicion or judicial oversight whatsoever. Such practices inch us closer to the type of police state that the Founders rejected, and eviscerate "the protections for which they fought." *Riley*, 134 S. Ct. at 2495. That is precisely the point: the third-party doctrine is inching us in the wrong direction.

1. The Court Should Focus on a Societal, Not an Individual or Subjective, Expectation of Privacy.

In *Jones*, the Court was divided over whether the Government's conduct constituted a trespass or infringed on the motorist's reasonable expectation of privacy. A majority of the Court agreed, however, that monitoring a suspect's movements with a GPS tracking device for twenty-eight days violated the Fourth Amendment. *See Jones*, 132 S. Ct. at 958 (Sotomayor, J., concurring); 132 S. Ct. at 964 (Alito, J., concurring, joined by Justices Breyer, Ginsburg, and Kagan). In addition, the plurality suggested that "achieving the same result through electronic means [may be] an unconstitutional invasion of privacy." *Id.* at 954 (brackets added).

Perhaps most importantly, a majority of the Court intimated that a standard focusing on the societal, not individual or subjective, expectation of privacy should govern the Fourth Amendment analysis. Justice Alito wrote in his concurring opinion that the two-pronged *Katz* standard "involves a degree of circularity," and that "judges are apt to confuse their own expectations of privacy with those of the hypothetical reasonable person to which the *Katz* test looks." *Id.* at 962 (Alito, J., concurring).

Rather than emphasizing an individual's actual and subjective expectation of privacy, Justice Alito held that the Government's conduct violated a

societal expectation of privacy. *See id.* at 964 ("society's expectation has been that law enforcement agents and others would not secretly monitor and catalogue every movement that respondent made in the vehicle while driving").

Under *Jones*, there should be little doubt that society as a whole has a legitimate expectation of privacy in the type of information that a hotel guest registry reveals. As stated above, these records reveal the names, room, license plate numbers, check-in times, and scheduled departure dates of every guest in a hotel. Thus, Section 41.49 has the practical effect of giving law enforcement officers the power to know the whereabouts of thousands of citizens who are not suspected of any wrongdoing, and who have done nothing other than make the decision to check into a Los Angeles hotel.

Justice Sotomayor's concurrence in *Jones* speaks to the harms that result from interpreting the third-party doctrine to permit the unregulated and prolonged monitoring of citizens:

> Awareness that the Government may be watching chills associational and expressive freedoms. And the Government's unrestrained power to assemble data that reveal private aspects of identity is susceptible to abuse. The net result is that GPS monitoring—by making available at a relatively low cost such a substantial quantum of intimate information about

> any person whom the Government, in its unfettered discretion, chooses to track—may "alter the relationship between citizen and government in a way that is inimical to democratic society." *Jones,* 132 S. Ct. at 956 (Sotomayor, J., concurring) (quoting *United States v. Cuevas–Perez*, 640 F.3d 272, 285 (7th Cir. 2011)) (Flaum, J., concurring).

Make no mistake: Section 41.49, like the GPS tracking device at issue in *Jones*, has the potential to affect every citizen in the United States, including the Justices of this Court. In *Jones,* Chief Justice Roberts engaged in the following colloquy with the Government's attorney, Michael Dreeben:

> CHIEF JUSTICE ROBERTS: You think there would also not be a search if you put a GPS device on all of our cars, monitored our movements for a month? You think you're entitled to do that under your theory?
>
> MR. DREEBEN: The Justices of this Court?
>
> CHIEF JUSTICE ROBERTS: Yes.
> (Laughter.)
>
> MR. DREEBEN: Under our theory and under this Court's cases, the Justices of this Court when driving on public roadways have no greater expectation of —

> CHIEF JUSTICE ROBERTS: So, your answer is yes, you could tomorrow decide that you put a GPS device on every one of our cars, follow us for a month; no problem under the Constitution?
>
> MR. DREEBEN: Well, equally, Mr. Chief Justice, if the FBI wanted to, *it could put a team of surveillance agents around the clock on any individual and follow that individual's movements as they went around on the public streets.*

Transcript of Oral Argument at 9-10, *Jones,* 132 S. Ct. 945 (emphasis added).[7]

The Court in *Smith* and *Miller* could not possibly have expected that the third-party doctrine would one day lead to such pervasive and widespread monitoring of unsuspecting citizens.

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[7] *See* Brian Owsley, *Triggerfish, Stingrays, and Fourth Amendment Fishing Expeditions,* 66 HASTINGS L. J. 183, 224 (2014) (stating that "Chief Justice Roberts appeared to address the reasonable expectations of privacy as it personally relates to him and the other members of the Court").

2. The Original Justifications for the Third-Party Doctrine Do Not Apply to Indiscriminate Searches of Private Information.

In *Riley*, the Court significantly weakened the foundation upon which the third-party doctrine rests. The Court recognized that the original justifications for the search incident to arrest doctrine—officer safety and evidence preservation—had been interpreted so broadly that the doctrine had nearly swallowed the rule against unreasonable searches and seizures. *See Riley*, 134 S. Ct. at 2483-92 (*citing United States v. Robinson*, 414 U.S. 218 (1973) (holding that law enforcement may search the contents of a crumpled cigarette pack found on an arrestee's person); *New York v. Belton*, 453 U.S. 454 (1982) (holding that officers may search a passenger compartment incident to arrest); *Thornton v. United States*, 541 U.S. 615, 632 (2004) (a search of the passenger compartment is permissible if "the arrestee is unsecured and within reaching distance of the passenger compartment at the time of the search") (Scalia, J., concurring).[8]

In *Arizona v. Gant*, 556 U.S. 332 (2009), the Court began to limit the reach of the search incident to arrest doctrine, acknowledging that the

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[8] In *Chimel v. California*, 395 U.S. 752, 762-63 (1969), the Court held that officers may perform a limited search of an arrestee's person incident to arrest for the purpose of protecting the officers' safety and preserving evidence).

relationship between the searches upheld in *Belton* and *Thornton,* and the original justifications for the search incident to arrest doctrine, was tenuous. *Id.* at 350-51 (limiting *Belton* and holding that searches of a vehicle must be for evidence related to the crime of arrest). Subsequently, in *Riley* the Court drew a categorical line that forced law enforcement to do what it should do most of the time—get a warrant. *See Riley,* 134 S. Ct. at 2495 ("[o]ur answer to the question of what police must do before searching a cell phone seized incident to an arrest is accordingly simple—get a warrant").

Writing for the majority, Chief Justice Roberts stated that cell phones "hold for many Americans 'the privacies of life'" 134 S.Ct. at 2495 (quoting *Boyd v. United States*, 116 U.S. 616, 630 (1886)), and thus differ in a "qualitative and quantitative sense from other objects that might be kept on an arrestee's person." 134 S.Ct. at 2489. For example, unlike searches of plastic containers, crumpled cigarette packs, or other finite physical spaces, warrantless searches of a cell phone's contents allowed law enforcement to rummage through a virtual treasure trove of private data "in an unrestrained search for evidence of criminal activity." *Id.* at 2494. As such, searches of an arrestee's cell phone resembled the "reviled 'general warrants' and 'writs of assistance' of the colonial era." *Id.*; *see also Olmstead v. United States*, 277 U.S. 438, 474 (1928) (Brandeis, J., dissenting) ("[t]he progress of science in furnishing the Government with means of espionage is not likely to stop with wiretapping").

Furthermore, the *Riley* Court recognized that privacy rights extend to items of uniquely personal value, *and* to information such as the numbers a person has dialed and the people with whom a citizen associates. This conclusion echoes Justice Stewart's dissent in *Smith*, where he wrote that citizens have an expectation of privacy in, among other things, their names, outgoing calls, and location:

> The numbers dialed from a private telephone—although certainly more prosaic than the conversation itself—are not without "content." Most private telephone subscribers may have their own numbers listed in a publicly distributed directory, but I doubt there are any who would be happy to have broadcast to the world a list of the local or long distance numbers they have called. This is not because such a list might in some sense be incriminating, but because it easily *could reveal the identities of the persons and the places called, and thus reveal the most intimate details of a person's life.*

442 U.S. at 748 (Stewart, J., dissenting) (emphasis added). In fact, the *Riley* Court specifically rejected the Government's contention that "officers should always be able to search a phone's call log." 134 S. Ct. at 2492.

After *Riley,* there should be no justification for

upholding a law that gives investigators unfettered authority to discover the identity and whereabouts of thousands of hotel guests—none of whom are suspected of criminal conduct—through searches that reveal far more than an outgoing call log.

The same principles that motivated the Court to invalidate warrantless cell phone searches incident to arrest counsel in favor of limiting the third-party doctrine. Like the search incident to arrest doctrine, which was created before man landed on the Moon, the third-party doctrine is the product of "Supreme Court decisions that are decades old." Jeremy H. Rothstein, *Track Me Maybe: The Fourth Amendment and the Use of Cell Phone Tracking to Facilitate Arrest*, 81 FORDHAM L. REV. 489, 507-08 (2012).

Admittedly, the third-party doctrine might be appropriate when referring to a federal investigation that includes a targeted search of an individual's bank records or the use of a pen register to monitor a single suspect's outgoing calls from a rotary telephone. Indeed, it is one thing for customers to know that a bank teller may disclose financial information to the government in connection with criminal and regulatory investigations. *See Miller*, 425 U.S. at 442-43 ("the expressed purpose of [the Bank Secrecy Act] is to require records to be maintained because they 'have a high degree of usefulness in criminal tax, and regulatory *investigations* and *proceedings*'") (quoting 12 U.S.C. § 1829b(a)(1)) (emphasis added) (brackets added). It is quite another to hold that once citizens check into a

hotel, they give up all rights to information that reveals where they are staying, who they are staying with, when they arrived, and when they are leaving.

Put differently, citizens should reasonably expect "phone companies to occasionally provide information to law enforcement," but not expect "all phone companies to operate a joint intelligence gathering operation with the government." *Klayman*, 957 F. Supp. 2d at 33 (monitoring calls from a single suspect's residence "in no way resembles the daily, all-encompassing, indiscriminate dump of cell phone metadata that the NSA now receives as part of its Metadata Program") (brackets added).

Some commentators argue that the third-party doctrine poses no threat to the privacy rights of those who have nothing to hide. *See, e.g.*, Nick Gillespie, *Richard Posner: Privacy is Mostly About Concealing Guilty Behavior* (December 8, 2014), available at: http://reason.com/blog/2014/12/08/richard-posner-privacy-is-mainly-about-c) ("[p]rivacy interests should really have very little weight when you're talking about national security"). Well, imagine if the third-party doctrine applied to a churchgoer entering a confessional, a client sitting in an attorney's office, or a patient seeking psychiatric care. These individuals might hesitate before speaking, or watch every word they say, if they knew that law enforcement might be eavesdropping.

The point, of course, is that privacy rights are not about hiding wrongdoing. They are about creating a

"realm of personal liberty which the government may not enter" without at least some degree of suspicion. *Planned Parenthood v. Casey,* 505 U.S. 833, 847 (1992). After all, privacy and liberty are two sides of the same constitutional coin. Without privacy, liberty is less secure.[9]

This is not to say that the Court must abandon the third-party doctrine entirely. For example, when citizens walk into a Safeway Pharmacy with a prescription for Seconal, drug enforcement agency officials should have the right to inspect Safeway's records to ensure that it is not overprescribing controlled substances, or that individuals are not doctor-shopping. *See* National Alliance for Model State Drug Laws, available at: http://www.namsdl.org/library/80E22BDA-19B9-E1C5-319D10D2D8989B6C/ (discussing the Health Insurance Portability and Accountability Act Privacy Rule and explaining the circumstances when disclosure is mandated by law).

Likewise, when someone checks in at the

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[9] It is not sufficient to say that hotel guest registries only contain superficial information such as an individual's name and location. After all, would it be reasonable for law enforcement—without the slightest degree of suspicion—to know the location of a citizen's psychiatrist, but be prohibited from knowing the substance of that citizen's communications to his or her psychiatrist? No. A physical or digital location reveals more than where a person is; a location may—and often does—reveal what a person is doing.

Hollywood Hills Hotel and uses the hotel's free internet access, the hotel's owners should be able to access the guest's search history to ensure that he or she is not downloading child pornography or arranging a secret meeting with members of Al-Qaeda. But when the state is involved, it must show, at the very least, that it possesses something more than a generalized suspicion of criminal conduct, and certainly much more than a hunch. Section 41.49 requires neither.

Furthermore, the third-party doctrine is not without limits. For example, the Drug Enforcement Agency may not use its authority to inspect Safeway's records as a pretext to conduct a broader search for evidence of criminal conduct. Section 41.49 permits law enforcement officials to do precisely that, thus making it likely that law enforcement can do precisely what the Fourth Amendment forbids: obtain evidence of criminal activity without having the authority to be in the area where the evidence was discovered. *See, e.g.*, *Minnesota v. Dickerson*, 508 U.S. 366, 375 (1993) ("if police are lawfully in a position from which they view an object, if its incriminating character is apparent, and if the officers have a lawful right of access to the object, they may seize it without a warrant"). Simply put, monitoring everyone just to catch a few bad apples is exactly what the Fourth Amendment's drafters sought to avoid.[10]

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[10] By way of analogy, warrantless searches of medical records are typically limited to circumstances where the government's

No one questions law enforcement's and the Government's interest in preventing crime and protecting national security. But this does not entitle law enforcement to sift through a hotel registry to find a needle in a haystack. If the Fourth Amendment is to have any meaning, it must be construed to prohibit law enforcement from going on a fishing expedition.

B. Searches of Hotel Guest Registries Should Require Reasonable Suspicion.

Amici respectfully submit that, before law enforcement can discover whether someone is staying at the Beverly Hills Hotel, it must provide reasonable, articulable facts upon which to conclude that a hotel guest may be engaged in criminal conduct.

The reasonable suspicion standard will help to ensure that the stamp of judicial approval is made of something other than rubber. *See Skinner*, 690 F.3d at 779 (noting that the Government's argument was

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purpose is to "identify or locate a suspect, fugitive, witness, or missing person," when a crime is committed on the premises, or when there is a "medical emergency in connection with a crime." *See* American Civil Liberties Union, *FAQ on Government Access to Medical Records*, available at: https://www.aclu.org/technology-and-liberty/faq-government-access-medical-records#_edn3 (discussing 45 C.F.R. § 164.512(f)(2002)).

"strengthened by the fact that the authorities sought court orders to obtain information on [the suspect's] location from the GPS capabilities of his cell phone") (brackets added); *In re Application of the United States of America for Historical Cell Site Data*, 724 F.3d 600, 606 (5th Cir. 2013); *Stored Communications Act*, 18 U.S.C. § 2703(d) (requiring the Government to set forth "specific and articulable facts that there are reasonable grounds to believe [that the records] sought, are relevant and material to an ongoing criminal investigation") (quoting 18 U.S.C. § 2703(d) (brackets added).

The urgency in this case is driven in part by the fact that the Fourth Amendment is already on dangerously thin ice. Carving out exception after exception to the warrant and probable cause requirements—from "good faith" to "special needs"—has diluted the privacy protections that citizens, in an era of indiscriminate searches and rapid technological advances, need now more than ever. *See, e.g., United States v. Leon*, 468 U.S. 897 (1984) (holding that improperly seized evidence is admissible if the officer's mistake was made in good faith); *City of Ontario, Cal. v. Quon*, 560 U.S. 746, 756 (2010) (stating that "'special needs, beyond the normal need for law enforcement' may make the warrant and probable-cause requirement impracticable for government employers.") (quoting *O'Connor v. Ortega*, 480 U.S. 709, 725 (1987)).

Surely, citizens should not be forced to travel through such treacherous terrain to enforce privacy

rights, and law enforcement should not have such an easy path to act on a mere hunch—or no hunch at all. And it does not matter whether hotels are considered closely regulated industries. What matters is that law enforcement's authority to uncover personal information concerning every hotel guest is entirely unregulated.[11]

By affirming the Ninth Circuit's decision with respect to the constitutionality of Section 41.49 and modifying the third-party doctrine to focus on a societal expectation of privacy, the Court will send a loud and clear message that "the diminution of privacy" that broad and indiscriminate searches entail, and that Section 41.49 enables, is not and need not be inevitable. *Jones*, 132 S. Ct. at 962 (Alito, J., concurring).

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11 The injury to privacy rights is particularly acute in the digital era. The NSA's metadata collection program and the monitoring of internet search history might make someone hesitate before calling a loved one, pause before emailing a friend, or think twice before downloading a controversial video on YouTube. Given that cell phones are owned by approximately ninety-one percent of the population and a repository for the papers and effects traditionally protected by the Fourth Amendment, the threat to privacy rights is grave indeed. *See Riley*, 134 S. Ct. at 2490.

II. THE ADMINISTRATIVE RECORDS EXCEPTION SHOULD NOT APPLY TO WARRANTLESS AND SUSPICIONLESS SEARCHES OF HOTEL GUEST REGISTRIES.

Sifting through a hotel guest registry is not equivalent to searching a restaurant's business records to ensure that it is complying with health and safety regulations. *See Camara v. Municipal Court*, 387 U.S. 523, 539 (1967) (administrative searches are valid as long as a "public interest justifies the intrusion"). When regulatory inspectors walk into a restaurant, they do not have the authority to know the names, license plates, credit card numbers, arrival and departure times, and entrée choices of every patron in the restaurant.

Likewise, guest registry searches cannot be compared to inspecting a liquor store's receipts to ensure that business owners are not selling whiskey to underage teenagers, or to examining a pawn shop's receipts to make sure that AK-47s are not being sold to convicted felons. *See Colonnade Catering Corp. v. United States*, 397 U.S. 72 (1970) (upholding the warrantless search of a catering business that sold liquor because the liquor industry was pervasively regulated); *United States v. Biswell*, 406 U.S. 311 (1972) (upholding the warrantless search of a pawn shop because of the public interest in regulating firearms to prevent violent crimes).

The purposes justifying searches of a

restaurant's or liquor store's records render them fundamentally different from searches of hotel guest registries or the collection of cell phone metadata. The former are conducted for a limited purpose and therefore guard against infringements on privacy, while the latter are pervasive and indiscriminate. Simply stated, searching a pawn shop's sales receipts does not affect thousands, or in the context of metadata collection, millions of citizens. *See e.g., Klayman*, 957 F. Supp. 2d at 42 (emphasizing the indiscriminate nature of the NSA's metadata collection program).

Of course, few would question the proposition that protecting public safety and strengthening national security are vital government interests. The more salient question, however, is whether these interests can justify a warrantless law enforcement dragnet that monitors the whereabouts of countless citizens without any judicial oversight whatsoever. The answer should be no. After all, the interest in preventing child sex trafficking at hotels should not give law enforcement officers unchecked power to do whatever they want, whenever they want, and for whatever reason they want.[12]

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12 If the Los Angeles City Council enacted the records disclosure features of Section 41.49 to combat, say, child prostitution and human trafficking, and the Court deemed that justification sufficient, application of Section 41.49 should be limited to those stated purposes. Thus, any warrantless application beyond those purposes is unconstitutional. On the other hand, if the Los Angeles City Council enacted Section 41.49's records disclosure features to give law enforcement

At the end of the day, one need only look to history, which "teaches that grave threats to liberty often come in times of urgency, when constitutional rights seem too extravagant to endure." *Skinner*, 489 U.S. at 635 (Marshall, J., dissenting). Constitutional rights such as privacy are essential, not extravagant, and the only thing difficult to endure is the sacrifice of liberty in the name of security, and the belief that privacy is only something that should be valued if we decide to commit a crime. The societal interest in privacy is not about hiding nefarious conduct from the state. Rather, it reflects a core value upon which liberty rests: that the right to reserve a hotel room without being monitored by the government "transcends the convenience of the moment." *See Clinton v. New York*, 524 U.S. 417, 449 (1998) (Kennedy, J., concurring).

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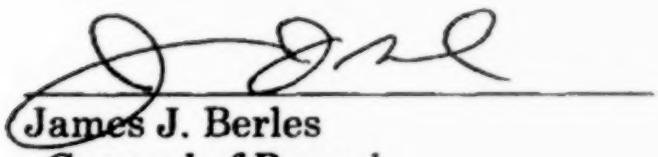
warrantless access to those hotel records at any time and for any purpose or even no purpose, then Section 41.49 violates the Fourth Amendment. Without any judicial oversight, there is no way to know what law enforcement is doing.

CONCLUSION

For these reasons, the judgment of the United States Court of Appeals for the Ninth Circuit should be affirmed in part and reversed in part.

Respectfully submitted,



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Petitioner,

v.

NARANJIBHAI PATEL, ET AL.,

Respondents.

On Writ Of Certiorari
To The United States Court Of Appeals
For The Ninth Circuit

BRIEF OF *AMICUS CURIAE* LOVE146 IN SUPPORT OF NEITHER PARTY

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INTEREST OF THE *AMICUS CURIAE*[1]

Love146 is a nonprofit international human rights organization working to end child trafficking and exploitation. Through caring for survivors, educating youth to prevent trafficking, training professionals who work with children, and empowering an abolition movement, Love146 works to abolish child trafficking and restore survivors to their communities. Among its many initiatives, Love146 has educated owners and operators of hotels and motels, which traffickers often use as places of exploitation, about identifying and reporting child sex trafficking. *See* Love146, *An Abolitionist Walks Into A Hotel* (Mar. 14, 2014).[2]

In light of its work to end child trafficking and exploitation, Love146 has a strong interest in this case. Love146 does not take a position on whether Los Angeles Municipal Code § 41.49 violates the Fourth Amendment or whether hotel and motel owners have an expectation of privacy in guest registries. Instead, Love146 seeks to bring to the Court's attention the serious problem of child sex trafficking in the United States and, in particular, traffickers' reliance on hotels and motels to conduct business. Love146's expertise in this area can inform the Court as to the balance of interests underlying

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[1] All parties have consented to the filing of this brief. As required by Rule 37.6, Love146 states that no counsel for a party authored this brief in whole or in part, and no person other than Love146, its members, and its counsel made any monetary contribution intended to fund the preparation or submission of this brief.

[2] http://love146.org/blog/hotels-fight-sex-trafficking.

§ 41.49, including how § 41.49 deters child sex trafficking by eliminating the shield of anonymity hotels and motels otherwise could provide to traffickers.

SUMMARY OF THE ARGUMENT

Child sex trafficking occurs in the United States, and traffickers conduct business in the same hotels and motels regulated by § 41.49. Thus, given that the constitutionality of § 41.49 may depend in part on a balancing of interests, *see Maryland v. King*, 133 S. Ct. 1958, 1977 (2013), understanding the role of § 41.49 in deterring child sex trafficking can inform the Court's analysis by highlighting the relevant interests at stake.

I. This brief explains that child sex trafficking is a serious problem in the United States that is compounded by traffickers' use of hotels and motels to traffic and house their child victims. Child sex trafficking is the sexual exploitation of children for profit, and often involves force, fraud, or coercion—it is modern-day slavery. And contrary to common assumptions, child sex trafficking occurs in the United States—it is not something that happens only in other countries. Although the number of victims of child sex trafficking is inherently difficult to measure, experts estimate that at least 100,000 children are trafficked for sex in the United States each year, with more than 200,000 children at risk of being trafficked. Moreover, child sex trafficking is a hugely profitable enterprise, with a net profit margin of approximately 70% worldwide, and an average net profit of $130,000 per victim in North America. Its profitability stems in part from the fact that a trafficker can sell a child repeatedly for sex, while a

trafficker's "acquisition" costs, whether through manipulation or purchase, often are only a few hundred dollars. Operating costs and the risk of arrest are likewise low.

Hotels and motels are critical elements of a child sex trafficking operation. Not only do children perform commercial sex acts at hotels and motels, but traffickers often house children there. Hotels and motels also are key to traffickers' efforts to avoid law enforcement. These establishments offer privacy and anonymity and, in some cases, their employees may conceal the presence of sex workers and traffickers, particularly if the hotel or motel depends on traffickers for business. Confirming the importance of hotels and motels to child sex traffickers, numerous recent criminal cases involved victims trafficked or housed in hotels or motels. Various hospitality industry groups, moreover, have acknowledged the pervasiveness of child sex trafficking at hotels and motels and have implemented programs to raise awareness and prevent trafficking.

II. Los Angeles Municipal Code § 41.49 deters child sex trafficking by removing the shield of anonymity that hotels and motels provide, making them less attractive places to traffic children for sex. Absent these low-cost and anonymous locations in which to house and traffic their victims, child sex trafficking becomes less lucrative, which serves to further deter its prevalence in the United States. Thus, § 41.49 and similar laws are invaluable in the fight against child sex trafficking.

III. Given that hotels and motels are critical elements of child sex trafficking operations, the

Court should give considerable weight to the well-being of child victims in its evaluation of § 41.49. To the extent the Fourth Amendment analysis here may at some point require a balancing of interests, *see King*, 133 S. Ct. at 1977, the interest of vulnerable children should be paramount. Indeed, this Court has repeatedly emphasized the importance of protecting children, even when doing so intrudes on constitutional rights.

ARGUMENT

I. CHILD SEX TRAFFICKING IS A SERIOUS PROBLEM THROUGHOUT THE UNITED STATES, WITH TRAFFICKERS RELYING ON HOTELS AND MOTELS TO EVADE DETECTION.

Child sex trafficking involves "the recruitment, harboring, transportation, provision, or obtaining of a [minor] for the purpose of a commercial sex act," defined as "any sex act on account of which anything of value is given to or received by any person." 22 U.S.C. § 7102(4), (10). Child sex trafficking, like all forms of human trafficking, is "the exploitation of human beings for profit"—it is modern-day slavery. U.S. Dep't of State, *Trafficking in Persons Report 2014* at 28 (June 2014) ("2014 TIP Report"); [3] Love146, *Learn*, love146.org/slavery ("Human trafficking is slavery."). Such exploitation is devastating to children; victims suffer severe psychological trauma and experience significant health complications, including drug dependence and sexually transmitted diseases. Linda A. Smith, *et*

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[3]http://www.state.gov/j/tip/rls/tiprpt/2014/?utm_source=NEW+RESOURCE:+Trafficking+in+Persons+R.

al., Shared Hope Int'l, *The National Report on Domestic Minor Sex Trafficking* at 41-42 (May 2009) (hereinafter "Shared Hope Report"); [4] Love 146, *Learn*, love146.org/slavery.

Three facts highlight why child sex trafficking is relevant to the Court's analysis in this case. *First*, child sex trafficking "is not just an issue that happens to people in other countries. The United States is a source and transit country, and is also considered one of the top destination points for victims of child trafficking and exploitation." UNICEF, United States Fund, *Child Trafficking*. [5] *Second*, child sex trafficking persists because it is highly profitable with low costs—including a low likelihood of prosecution. *Third*, hotels and motels play a critical (even if often unwilling) role in child sex trafficking because they minimize the risk of detection by law enforcement.

A. Thousands Of Children Are Trafficked For Sex In The United States Each Year, And Even More Are At Risk Of Being Trafficked For Sex.

"No known studies exist that quantify the problem of trafficking in children for the purpose of commercial sexual exploitation in the United States." Trafficking Victims Protection Reauthorization Act of 2005, Pub. L. No. 109-164, 119 Stat. 3558, 3559 (2006). Nonetheless, experts' estimates and

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[4] http://sharedhope.org/wp-content/uploads/2012/09/SHI_National_Report_on_DMST_2009.pdf.

[5] http://www.unicefusa.org/mission/protect/trafficking (last visited Dec. 15, 2014).

anecdotal evidence, even viewed conservatively, reflect that child sex trafficking is a serious problem in the United States.

Experts estimate that at least 100,000 American children are victims of child sex trafficking each year. Shared Hope Report, *supra* at iv. According to "[o]ne of the most widely cited estimates," moreover, "between 244,000 and 325,000 children are at risk of commercial sexual exploitation in the United States" at any given time. Institute of Medicine, *Confronting Commercial Sexual Exploitation and Sex Trafficking of Minors in the United States* (2013) at 42 [6] (hereinafter "Confronting Commercial Sexual Exploitation").

Anecdotal data from anti-trafficking organizations and law-enforcement agencies offer additional insight regarding the prevalence of child sex trafficking in the United States. Earlier this year, for example, "law enforcement authorities arrested 281 pimps and recovered 168 child [victims] in a nationwide sex trafficking sting in 106 cities." Michael S. Schmidt, *F.B.I. Cracks Down on*

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[6] http://www.nap.edu/catalog/18358/confronting-commercial-sexual-exploitation-and-sex-trafficking-of-minors-in-the-united-states.

The study underlying these estimates has significant methodological limitations, as "clearly acknowledged by the [study's] authors." Confronting Commercial Sexual Exploitation, *supra* at 42-43. That it nonetheless remains one of the most widely cited and comprehensively conducted studies—despite the authors' call for deeper and more well-funded analysis by others, *id.* at 43—only underscores the difficulty of identifying and quantifying child sex trafficking victims.

Sex Trafficking, N.Y. Times, June 24, 2014, at A17. And between January 2008 and June 2010, of the 2,515 incidents investigated by federally funded human trafficking task forces, 40% "involved prostitution of a child or child sexual exploitation." U.S. Dep't of Justice, Bureau of Justice Statistics, *Characteristics of Suspected Human Trafficking Incidents, 2008-2010* at 3 (2011).[7] More recently, the National Human Trafficking Resource Center reported that between 2007 and 2012 it received 9,298 reports of potential human trafficking, approximately 1,975 of which reported child sex trafficking. Polaris Project, *Human Trafficking Trends in the United States: National Human Trafficking Resource Center 2007-2012* at 5 (2013).[8] In short, "[t]here is substantial and compelling evidence that sex trafficking of minors in the United States" is a "serious problem[]." Confronting Commercial Sexual Exploitation, *supra* at 5.

In particular, children are vulnerable to sex trafficking because their young age renders them susceptible to the various manipulative tactics that traffickers use to recruit victims. *See* Shared Hope Report, *supra* at 31. The average age at which girls first are exploited through sex trafficking is between 12 and 14 years old; for boys and transgender youth, the average age is even younger, between 11 and 13 years old. U.S. Dep't of Health and Human Services, *Human Trafficking Into and Within The United States: A Review of the Literature* at 9 (2009); Shared

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[7] http://www.bjs.gov/index.cfm?ty=pbdetail&iid=2372.

[8] http://www.polarisproject.org/human-trafficking/overview/human-trafficking-trends.

Hope Report, *supra* at 30. Victims of child sex trafficking "come from a variety of socio-economic backgrounds, geographic areas, and ethnicities." Shared Hope Report, *supra* at 9. Children who have run away from home, foster homes, or group homes—in many cases to escape physical, sexual, or psychological abuse—are particularly vulnerable. *Id.*; Tessa L. Dysart, *Child, Victim, or Prostitute? Justice Through Immunity for Prostituted Children*, 21 Duke J. Gender L. & Pol'y 255, 260 (2014); *see also* 151 Cong. Rec. E270 (Feb. 17, 2005) (statement of Rep. Smith) ("It is well documented that runaway and homeless children are highly susceptible to trafficking for commercial sexual exploitation.").

Traffickers approach children at schools, malls, parks, and public transportation stations. *See* Shared Hope Report, *supra* at 31. They also contact children online through social networking sites like Facebook. *E.g.*, U.S. Attorney's Office, *Leader of Crips Gang Pleads Guilty to Prostituting Eight Juveniles* (June 26, 2012)[9](defendant used "online social networking sites [to] entice[] the girls to use their good looks to earn money through prostitution"). To recruit children, traffickers identify a child's vulnerabilities—for instance, low self-esteem, a need for shelter or food, or the absence of a parent figure—and exploit them to gain the child's trust and dependency. Shared Hope Report, *supra* at 38. A "primary method of manipulation is to secure a seemingly loving and caring relationship," acting as

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[9]http://www.justice.gov/usao/vae/news/2012/06/20120626stromnr.html (last visited Dec. 15, 2014).

the child's boyfriend or girlfriend. Shared Hope Report, *supra* at 31. Jenna, a 14-year-old girl in Northern Virginia, for example, "met an attractive boy" at Target after school. Just Ask Va, *Jenna's Story*.[10] He told her that she "was pretty and [that] he would be happy to call [her] his girlfriend." *Id.* After they had been dating for over a month, "he said that he was having money problems," and asked her to help him pay his bills by having sex with other men. *Id.* She agreed, but when she tried to stop, "[h]e yelled and screamed and then hit [her]." *Id.*

Recent convictions for child sex trafficking reflect that Jenna's situation is unfortunately not unique. In Michigan, a trafficker "targeted vulnerable girls with troubled backgrounds, and controlled his victims by making them feel like he loved and cared about them, interspersed with threats and violence." U.S. Attorney's Office, *Man Convicted of Child Sex Trafficking in Grand Rapids* (Apr. 30, 2014).[11] A Seattle-area man "befriended" a 15-year-old girl who had run away from home by "let[ting] the girl borrow his cell phone and sit in his car, out of the rain." U.S. Attorney's Office, *South King County Man Convicted of Sex Trafficking Juveniles Across State Lines* (Nov. 6, 2014).[12] He then "manipulated the girl into accompanying him to a hotel room where he

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[10] justaskva.org/blog/story/jennas-story (last visited Dec. 15, 2014).

[11] http://www.justice.gov/usao/miw/news/2014/2014_0430_EJackson.html (last visited Dec. 15, 2014).

[12] http://www.justice.gov/usao/waw/press/2014/November/bonds.html (last visited Dec. 15, 2014).

raped her. Over the next few days, [he] coerced the girl into working for him as a prostitute." *Id.*

Traffickers also might tell a young girl that they will help her secure a modeling or other job in the entertainment industry. *E.g.*, U.S. Attorney's Office, *Houston Man Gets 40 Years For Sex Trafficking of Children* (Aug. 14, 2014) (defendant told victims that "he was going to help them become models").[13] Other traffickers have created false online profiles to lure children. For example, a trafficker contacted 15-year-old Blake over Facebook, pretending to be a teenage girl. Just Ask Va, *Blake's Story*.[14] After talking with Blake for several weeks, "she" invited him to her house. *Id.* When Blake arrived, the man who had been posing as the teenage girl hit and raped Blake, and "convinced [him] to have sex with [the man's] friends" for money, telling Blake that it would help him "learn about [his] sexuality." *Id.*

B. Child Sex Trafficking Persists Because It Is Highly Profitable With Few Risks To Traffickers.

A key reason that child sex trafficking continues is its profitability, including the low risk of detection by law enforcement. According to the International Labour Organization, a specialized agency of the United Nations, sex trafficking generates $99 billion in illegal profits each year. International Labour Office, *Profits and Poverty: The Economics of Forced*

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[13]http://www.justice.gov/usao/txs/1News/Releases/2014%20August/140814%20-%20Harris.html (last visited Dec. 15, 2014).

[14] http://justaskva.org/blog/story/blakes-story/ (last visited Dec. 16, 2014).

Labour at 13 (2014).[15] Measured on a per-victim basis, a leading expert estimates that the global weighted average net profit is over $29,000, and over $130,000 in North America. Siddharth Kara, *Attacking the Demand For Child Sex Trafficking* (Apr. 14, 2011).[16] Thus, a trafficker in the United States can expect to earn at least $100,000 from trafficking just one victim. National Center for Missing and Exploited Children, *Innocence Lost Working Group, Commercial Sexual Exploitation of Children: A Fact Sheet* (Mar. 2010)[17]; *see also* In Our Own Backyard: Child Prostitution and Sex Trafficking in the United States: Hearing Before the Subcomm. on Human Rights and the Law of the S. Judiciary Comm. 4 (2010) (statement of Sen. Ron Wyden) (remarking that "a pimp can make $200,000 a year trafficking just one victim"). The profit margin for sex trafficking, moreover, is approximately 70%. Siddharth Kara, *Sex Trafficking: Inside the Business of Modern Slavery* 19 (2009). In fact, recent reports indicate that "[m]ore and more gangs are [trafficking] teens, finding it a bigger moneymaker than drugs or weapons." Matt Zapotosky, *More Gangs Entering Child Sex Trade, Prosecutors Say*, Washington Post, Sept. 30, 2013, at B1.

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[15] http://www.ilo.org/wcmsp5/groups/public/---ed_norm/---declaration/documents/publication/wcms_243391.pdf.

[16] http://thecnnfreedomproject.blogs.cnn.com/2011/04/14/attacking-the-demand-for-child-sex-trafficking/ (last visited Dec. 16, 2014).

[17] http://www.missingkids.com/en_US/documents/CCSE_Fact_Sheet.pdf.

The profitability of child sex trafficking stems from both the nature of the "product" and the low costs associated with such trafficking. To start, from the trafficker's perspective, a child is "the ideal durable asset." Kristian Bryant Rose, *Looking for Love in All the Wrong Places: A Call to Reform State Law on Sex Trafficking*, 65 Okla. L. Rev. 303, 326-27 (2013). Unlike drugs, which can be sold only once, "a sex trafficker can sell a person repeatedly." *Id.* With respect to costs, both acquiring children to traffic and running a child sex trafficking operation require only limited resources. For example, traffickers that recruit young girls by pretending to be their boyfriend might spend a few hundred dollars on gifts and dates over the recruitment period. Traffickers that purchase children have similarly low acquisition costs—"a marketable slave is often only a few hundred dollars.'" *Id.* at 325. As to operating expenses, traffickers "rarely pay for anything more than the child's most basic needs, such as food and clothes"—"the only significant costs" are housing and travel. Erika R. George & Scarlet R. Smith, *In Good Company: How Corporate Social Responsibility Can Protect Rights and Aid Efforts to End Child Sex Trafficking and Modern Slavery*, 46 N.Y.U. J. Int'l L. & Pol. 55, 71-72 (2013).

Notably, the "cost" of criminal penalties is also relatively low. The "weak criminal penalties" and the fact that child sex trafficking is difficult for law enforcement to discover mean that the cost associated with "getting caught" is minimal. Cheryl Nelson Butler, *Making the Grade: The U.S. TIP Report & the Fight Against Domestic Child Sex Trafficking*, 67 SMU L. Rev. 341, 343 (2014). As experts have estimated, while a trafficker earns on

average $30 per sex act, "the average cost of getting caught" is only a small fraction of those earnings. George, *In Good Company*, 46 N.Y. U. J. Int'l L. & Pol. at 72 (citing Kara, *Sex Trafficking* at 214).

C. Traffickers Use Hotels And Motels To Conduct Their Child Sex Trafficking Operations While Avoiding Detection By Law Enforcement.

Child sex trafficking could not operate so easily in the United States without the availability of hotels and motels. They are, in short, integral to modern child sex trafficking operations. "With the use of online classified ads, child trafficking is moving off the streets and behind the closed doors of local hotel rooms." ECPAT USA, *Corporations*, www.ecpatusa.org/corporations (last visited Dec. 19, 2014). Indeed, anti-trafficking advocates have indicated that "hotels are the primary scene of commercial sexual exploitation of children, 'accounting for 93.3% of incidences.'" George, *In Good Company*, 46 N.Y. U. J. Int'l L. & Pol. at 66-67; *see also* Texas Human Trafficking Prevention Task Force, *Introduction to Human Trafficking: A Guide for Texas Education Professionals* at 12 (July 2014)[18] (identifying hotels and motels as places where youth are trafficked).

Traffickers use hotels and motels both as sites where children engage in commercial sex acts and as places to house their child victims. Polaris Project, *Human Trafficking in Hotels and Motels, Victim and*

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[18]https://www.texasattorneygeneral.gov/AG_Publications/pdfs/HumanTraffick_RPRT2014.pdf.

Location Indicators at 1 (2012).[19] Hotels and motels are used by traffickers because they minimize the risk of detection by law enforcement. Traffickers thus "take advantage of the privacy and anonymity offered by hotels and motels." *Id.* For instance, traffickers often target motels "with outside room entrances, so that front desk staff cannot easily monitor their guests." Urban Institute, *Estimating the Size and Structure of the Underground Commercial Sex Economy in Eight Major US Cities* at 107 (March 2014)[20] (hereinafter "Urban Institute"). Moreover, according to a recent study, a lower-end motel may have an incentive to protect traffickers because traffickers are in some instances the motel's "main customer," and the motel "would go broke" without their business. *Id.* Thus, hotel employees sometimes "tip[] off pimps to law enforcement inquiries" or "intentionally conceal[] the presence of sex workers and pimps" from law enforcement. *Id.* at 187. In these and other instances, hotel employees "might be receiving money from the pimp to keep quiet." *Id.* at 107.

Child sex traffickers depend on hotels and motels to such a great extent that the hospitality industry has developed "The Code of Conduct for the Protection of Children from Sexual Exploitation in Travel and Tourism." "The Code" is "an industry-driven responsible tourism initiative with a mission to provide awareness, tools and support to the

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[19]http://www.twolittlegirls.org/ufiles/Hotel%20and%20Motel%20Indicators%20AAG.pdf.

[20] www.urban.org/uploadedpdf/413047-underground-commercial-sex-economy.pdf.

tourism industry in order to prevent the sexual exploitation of children." The Code, *About*, http://www.thecode.org/about (last visited Dec. 17, 2014). Member companies "commit to taking six essential steps to help protect children," including adopting a "zero tolerance" policy of sexual exploitation of children. *Id.* Numerous hotel companies, including Hilton Worldwide and Wyndham Worldwide, the world's largest hotel company, have joined The Code. The Code, *Members of the Code*, www.thecode.org/who-have-signed (last visited Dec. 17, 2014). The Wyndam Hotel Group also has partnered with anti-trafficking advocate Polaris to develop "comprehensive training and educational tools" for hotel owners, franchisees, staff, and call-center employees "to educate them about all aspects of human trafficking." Press Release, Wyndham Worldwide, *Wyndham Hotel Group Partners with Polaris to Help Prevent Human Trafficking* (Nov. 17, 2014).[21] And the American Hotel & Lodging Association, "the sole national association representing all segments" of the U.S. lodging industry, American Hotel & Lodging Association, *About Us*,[22] encourages its members to view a Child Trafficking Webinar to combat trafficking in hotels and motels, American Hotel & Lodging Association, *Combat Human Trafficking*.[23]

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[21] http://www.wyndhamworldwide.com/news-media/press-releases/wyndham-hotel-group-partners-polaris-help-prevent-human-trafficking (last visited Dec. 16, 2014).

[22] http://www.ahla.com/content.aspx?id=3438 (last visited Dec. 19, 2014).

[23] http://www.ahla.com/content.aspx?id=30645&terms=child+trafficking (last visited Dec. 16, 2014).

While these worldwide, higher-end hotels have implemented programs to fight child sex trafficking, local and lower-end hotels and motels, where child sex traffickers often conduct business, generally have not. *See* Urban Institute, *supra* at 107 ("[H]igher-end hotels are more willing and eager to assist with investigations," while "lower end hotels and motels [do] not always cooperate with law enforcement.").

Recent cases involving child sex trafficking further underscore that children are regularly trafficked for sex and housed in hotels and motels. A pimp in Tampa, for example, "facilitate[d] [his] crimes" by "rent[ing] two hotel rooms One room was used for [the pimp] and the minors to sleep, while the other room was designated for prostitution." U.S. Attorney's Office, *Security Guard Sentenced to 15 Years in Prison for Coercing and Enticing Minors into Prostitution* (May 15, 2014).[24] Similarly, a Michigan trafficker arranged for "teenage girls, ages 14, 15, and 16," in his sex trafficking operation to meet customers at local hotels. U.S. Attorney's Office, *Jackson Man Convicted of Sex Trafficking By Force* (Nov. 26, 2014). [25] And in "one of the largest underage prostitution rings in the Washington area's history," traffickers "advertised services on the Web and had girls meet clients at hotels." Zapotosky, *supra* at B1.

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[24]http://www.justice.gov/usao/flm/press/2014/May/20140515_Lewis.html (last visited Dec. 19, 2014).

[25]http://www.justice.gov/usao/mie/news/2014/2014_11_26_dsmith.html (last visited Dec. 19, 2014).

There are countless additional cases involving child sex trafficking at hotels and motels.[26]

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[26] *See, e.g.*, U.S. Attorney's Office, *Two Baltimore Pimps Sentenced to Prison for Sex Trafficking of a Minor* (Aug. 28, 2014), http://www.justice.gov/usao/md/news/2014/TwoBaltimorePimpsSentencedToPrisonForSexTraffickingOfAMinor.html (last visited Dec. 16, 2014) (task force members "recovered a 14 year old girl from a motel on Joppa Road in Baltimore," where "the victim had been performing commercial sex acts from that hotel for approximately four days"); U.S. Attorney's Office, *Recent Child Exploitation Cases: 3 Indictments, One Guilty Plea and One 14-Year Sentence* (Aug. 14, 2014), http://www.justice.gov/usao/cae/news/docs/2014/2014_08/08-14-14PSC.html (last visited Dec. 16, 2014) (thirty-year-old trafficker "posted online prostitution ads for a 16-year-old girl in Sacramento and Anaheim," and "managed the victim by providing directions on when and where she should work [and] transporting her to hotels"); U.S. Attorney's Office, *Malden Man Pleads Guilty to Sex Trafficking of a Minor* (May 22, 2014), http://www.justice.gov/usao/ma/news/2014/May/MinasianDavidpelaPR.html (last visited Dec. 16, 2014) (minor victim was prostituted in area hotels); U.S. Attorney's Office, *Los Angeles-Area Gang Member Who Trafficked Teens as Prostitutes Sentenced to 30 Years in Federal Prison* (Mar. 31, 2014), http://www.justice.gov/usao/cac/Pressroom/2014/036.html (last visited Dec. 16, 2014) (noting that the sex-trafficking victims were housed at hotels or motels); U.S. Dep't of Justice, *Defendant Pleads Guilty to Federal Offense of Sex Trafficking of a Child* (Mar. 28, 2014), http://www.justice.gov/usao/nyn/news/1981-3902-1106492672.pdf (last visited Dec. 16, 2014) (victim was transported "to various locations including hotels where [the minor] was instructed and caused to engage in commercial sex acts"); U.S. Attorney's Office, *Child Sex Trafficker Sentenced to Nine Years Imprisonment*, http://www.justice.gov/usao/lam/news/2014/pr2014002.html (last visited Dec. 16, 2014) (reporting that all of the victim's commercial sex transactions were "coordinated by [the trafficker] and occurred in a hotel in Baton Rouge"); *State v. Monroe*, No. 69123-6-I, 2014 Wash. App. LEXIS 1034, at *3

II. SECTION 41.49 DETERS CHILD SEX TRAFFICKING BY REMOVING THE SHIELD OF ANONYMITY THAT THE HOTELS AND MOTELS PROVIDE TO TRAFFICKERS.

Given that hotels and motels are a primary site for child sex trafficking, laws that give law enforcement access to hotel and motel guest registries, like § 41.49, can significantly reduce this horrendous crime. Section 41.49's record-keeping and inspection provisions seek to deter crime at hotels and motels "on the theory that those who would be inclined to use hotels to facilitate their illicit activities will be less inclined to do so if they know that hotel operators must collect—and make available to the police—information identifying each of their guests." (Pet. App. 10.) That rationale is particularly applicable to child sex trafficking. For example, the ordinance would prevent a trafficker from using cash to maintain anonymity—hotels must

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(continued...)

(Wash. Ct. App. Apr. 28, 2014) (noting that the trafficker and his victim "moved to [a hotel] where [the victim] continued to work" for the trafficker as a prostitute); *State v. Williams*, 329 P.3d 400, 406 (Kan. 2014) (minor trafficking victim and pimp "stayed in three hotels over . several days," where the pimp waited while the victim "walk[ed] the streets"); *Creighton v. State*, 761 S.E.2d 373, 374 (Ga. Ct. App. 2014) ("T.S.," a 14-year-old girl, "met men through the advertisements" posted by the trafficker, and "told them to come to Room 330 at [a] motel," where "T.S. performed sexual activities in exchange for money."); *Commonwealth v. Halstrom*, 996 N.E.2d 892, 895 (Mass. App. Ct. 2013) ("Halstrom provided the girls with hotel names and keys, gave them drugs, took them to the hotels, paid for the rooms, and took $100 of the $300 charged per hour by each girl.").

record identification information for guests paying in cash. (*Id.* at 64.) A guest registry, moreover, would reflect that a teenage girl checked into a motel room for only a few hours. (*Id.* at 60, 64.)

By all accounts in the record, § 41.49 has achieved its goal of deterring crime at hotels and motels. According to Detective Eric Moore, "the motel registration card requirement deters prostitution and/or other criminal activities at motels," because "criminals are reluctant to provide true identifying information" or might "falsify such information." (JA 116.) Statistics compiled by the Los Angeles Police Department confirm the deterrent effect; once police lost authority to conduct surprise inspections, criminal activity at various motels increased 82% over a six-month period. (*See* Pet. App. 120-172.)

By deterring child sex trafficking at hotels and motels, § 41.49 also can deter child sex trafficking generally. As discussed above, a substantial portion of child sex trafficking occurs at hotels and motels. And if low-cost and anonymous hotels are no longer available to house and traffic victims, child sex traffickers would be forced to find alternative—and potentially riskier and more expensive—locations to conduct business. *See* Butler, *Making the Grade*, 67 SMU L. Rev. at 343. By increasing the risk of detection, then, § 41.49 increases the "cost" of child sex trafficking, making it a less lucrative criminal enterprise and ultimately reducing its prevalence in the United States.

III. IN ANALYZING § 41.49, THE COURT SHOULD GIVE CONSIDERABLE WEIGHT TO THE INTEREST OF PROTECTING CHILDREN FROM CHILD SEX TRAFFICKING IN HOTELS AND MOTELS.

As noted above, Love146 does not take a position on whether hotel and motel owners have an expectation of privacy in guest registries, or whether § 41.49 is constitutional. Instead, to the extent that the Court balances the interests in analyzing § 41.49, *see King*, 133 S. Ct. at 1977, Love146 urges the Court to give significant weight to the interest of protecting children from victimization through sex trafficking.

This Court, in balancing legitimate government interests against the intrusion on constitutional rights, repeatedly has given considerable weight to the interest in protecting children. For example, emphasizing "the interests of society to protect the welfare of children" from "the crippling effects of child employment," the Court upheld child labor laws despite their infringement on a parent's "freedom of conscience and religious practice" and "authority in her own household and in the rearing of her children." *Prince v. Massachusetts*, 321 U.S. 158, 165 (1944). This Court also has held that "a State's interest in the physical and psychological well-being of child abuse victims may be sufficiently important to outweigh, at least in some cases, a defendant's right to face his or her accusers in court." *Maryland v. Craig*, 497 U.S. 836, 853 (1990). Additionally, the Court has upheld against First Amendment challenge laws that prohibit the production, distribution, sale, and possession of child pornography, invoking "the importance of the State's

interest in protecting" the children abused in the creation of child pornography. *Ashcroft v. Free Speech Coalition*, 535 U.S. 234, 249-50 (2002). And in the Fourth Amendment context, the Court has validated mandatory drug testing for students in light of the "important interest in detecting and preventing drug use" by children. *Bd. of Educ. of Ind. Sch. Dist. No. 92 of Pottawatomie Cnty. v. Earls*, 536 U.S. 822, 825 (2002).

Consistent with these precedents, in considering the constitutionality of Los Angeles Municipal Code § 41.49, the Court here should give significant consideration to protecting children who are trafficked in hotels and motels governed by the ordinance. Although child sex trafficking is often hidden behind closed doors, it is a serious problem in the hotels and motels in this country. It should not be hidden in the Court's analysis.

CONCLUSION

Love146 respectfully requests that the Court consider, in its evaluation of the constitutionality of § 41.49, the interest in protecting the thousands of children who are trafficked for sex in hotels and motels across the United States.

Respectfully submitted,

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AMICUS CURIAE BRIEF

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FILED
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OFFICE OF THE CLERK

No. 13-1175

IN THE

Supreme Court of the United States

CITY OF LOS ANGELES, CALIFORNIA, *Petitioner*,

v.

NARANJIBHAI PATEL, ET AL, *Respondents*.

On Writ of Certiorari to the United States Court of Appeals for the Ninth Circuit

BRIEF OF *AMICUS CURIAE* MANHATTAN INSTITUTE FOR POLICY RESEARCH IN SUPPORT OF PETITIONER

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QUESTION PRESENTED

Does the Fourth Amendment permit facial challenges to ordinances and statutes?

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INTEREST OF *AMICUS CURIAE*[1]

The Manhattan Institute for Policy Research was established in 1978 as a nonpartisan public policy research foundation developing ideas that foster economic choice and individual responsibility. The Institute's Center for Legal Policy seeks to develop and communicate novel, sound ideas on how to improve the civil and the criminal justice systems.

Among the Institute's signature policy ideas is a collection of proactive policing methods developed by Institute scholars, which were put into place in various cities in the United States, beginning in New York in the 1990s, under former (and current) police commissioner William Bratton. Bratton also utilized many of these ideas in Los Angeles when he served as Chief of Police for that city from 2002 through 2009. These proactive policing methods have, according to various studies, been partially responsible for the significant decline in violent and property crimes in New York and other cities in which they have been implemented.

The Manhattan Institute is interested in this case both because it involves the appropriate methodology for interpreting the United State Constitution—central to the broader rule of law—and because a decision subjecting statutes and ordinances to faci-

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[1] Pursuant to this Court's Rule 37.3(a), all parties have consented to the filing of this brief. Pursuant to Rule 37.6, *amicus* affirms that no counsel for any party authored this brief in any manner, and no party, party's counsel, or any person other than *amicus*, their members, or their counsel made a monetary contribution to the preparation or submission of this brief.

al challenge under the Fourth Amendment would imperil the core policy ideas the Institute has developed.

SUMMARY OF THE ARGUMENT[2]

A Fourth Amendment challenge is inherently an as-applied challenge for the simple reason that the Fourth Amendment binds the executive branch and restricts the paradigmatic executive action of searching and seizing.

Courts have not always been perfectly clear about the distinction between facial and as-applied challenges, and this case presents a perfect opportunity to clarify the distinction. What a close reading of the cases reveals is that this distinction simply turns on who has allegedly violated the Constitution. A facial challenge is a challenge to legislative action. An as-applied challenge is a challenge to executive action.

The Constitution empowers and restricts different officials differently. A constitutional claim is a claim that a particular government actor has exceeded a grant of power or transgressed a restriction. But because different government actors are vested with

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[2] The arguments that follow are set forth more comprehensively in two *Stanford Law Review* Articles written by *amicus*'s counsel of record. See Nicholas Quinn Rosenkranz, *The Subjects of the Constitution*, 62 Stan. L. Rev. 1209 (2010) (Rosenkranz, *Subjects*); Nicholas Quinn Rosenkranz, *The Objects of the Constitution*, 63 Stan. L. Rev. 1005 (2011) (Rosenkranz, *Objects*). These articles have been cited repeatedly by Courts of Appeals to help elucidate the distinction between "facial" and "as-applied" challenges. See *United States* v. *Jones*, 689 F.3d 696, 703 (7th Cir. 2012); *Diop* v. *ICE/Homeland Security*, 656 F.3d 221, 232 (3d Cir. 2011); *Ezell* v. *City of Chicago*, 651 F.3d 684, 697 (7th Cir. 2011).

different powers and bound by different restrictions, one cannot determine *whether* the Constitution has been violated without knowing *who* has allegedly violated it. The *predicates* of judicial review inevitably depend upon the *subjects* of judicial review. Courts sometimes write, euphemistically, of challenges to statutes or ordinances, thus obscuring the subjects of constitutional claims. But the Constitution does not prohibit statutes and ordinances; it prohibits *actions*—the actions of particular government actors. Thus, every constitutional inquiry properly begins with the subject of the constitutional claim. And the first question in any such inquiry is the *who* question: *who has allegedly violated the Constitution?*

The *who* question establishes the two basic forms of judicial review: "facial challenges" and "as-applied challenges." In the typical constitutional case, the legislature will make a law, the executive will execute it, and someone will claim that his constitutional rights have been violated. The first question to ask such a claimant is *who has violated the Constitution?* The legislature, by making the law? Or the executive, by executing the law?

This fundamental dichotomy, between judicial review of *legislative* action and judicial review of *executive* action, is the organizing dichotomy of constitutional law. It is this dichotomy that is obscured by the anthropomorphic trope that "statutes"—rather than government actors—violate the Constitution. And it is this dichotomy that courts implicitly acknowledge with the distinction between "facial challenges to statutes" and "as-applied challenges to statutes." Properly understood, *a "facial challenge" is nothing more nor less than a challenge to legislative*

action, and an "as-applied challenge" is nothing more nor less than a challenge to executive action.

The Fourth Amendment binds executive officials, forbidding them from executing unreasonable searches and seizures. Fourth Amendment challenges are always and inherently challenges to executive action. Thus, Fourth Amendment challenges are always and inherently fact-specific, "as-applied" challenges.[3]

ARGUMENT

I. THE CONSTITUTION PROHIBITS NOT ORDINANCES BUT ACTIONS

The Constitution prohibits certain *actions*. This is the nature of legal prohibitions; violations of the Constitution, like violations of a criminal code, are

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[3] Strictly speaking, this case concerns the Fourth Amendment as incorporated against the States by the Fourteenth Amendment. This brief will refer only to the Fourth Amendment and will use state and federal examples interchangeably, because this Court granted certiorari on the Fourth Amendment question with no mention of the Fourteenth, and because this Court has held that the Fourth Amendment's proscriptions incorporate verbatim against the states. See *Ker* v. *California*, 374 U.S. 23, 33 (1963) ("the standard of reasonableness is the same under the Fourth and Fourteenth Amendments"). Some scholars have suggested that the Bill of Rights properly undergoes "refinement" when applied to the States, see Akhil Reed Amar, *The Bill of Rights: Creation and Reconstruction* 215–83 (2000); Akhil Reed Amar, *Fourth Amendment First Principles*, 107 Harv. L. Rev. 757, 792 & n.134 (1994); Rosenkranz, *Objects* 1063–66. But the Court's doctrine is to the contrary, and so this brief will assume that the Fourth Amendment's prohibition against unreasonable searches and seizures is enforced in the same manner against both the federal government and the States.

effected by actions, by actus rei. See 2 Wayne R. LaFave, *Substantive Criminal Law* § 11 at 4 (2d ed. 2003) ("[o]ne of the basic premises of the criminal law is that bad thoughts alone cannot constitute a crime There must also be an act").

Judicial review is the constitutional review of such actions. And actions require actors, just as verbs require subjects. Thus, a constitutional claim is necessarily a claim that some *actor* has acted inconsistently with the Constitution.

Unfortunately, courts are sometimes vague about exactly who has violated the Constitution. If Congress makes a law, the President executes the law, and a constitutional right is violated, it must be that either Congress or the President violated the Constitution. And yet courts rarely say that "Congress has violated the Constitution" or "the President has violated the Constitution." Instead, they often use a formulation that elides this crucial *who* question: "*the statute* violates the Constitution."

This formulation derives, perhaps, from a linguistic quirk. Congress *acts* by making laws. But the *product* of the action of Congress—the statute, the public law—is also called an "Act of Congress." In grammatical terms, "act" is both a noun ("an act") and a verb ("to act"), see *Black's Law Dictionary* 42 (rev. 4th ed. 1968), as it has been since before the Founding. See, e.g., Francis Allen, *A Complete English Dictionary* 6 (London, J. Wilson & J. Fell 1765); 1 Samuel Johnson, *A Dictionary of the English Language* 43 (London, J.F. & C. Rivington et al. 8th ed. 1786). And so, in common parlance, when Congress *acts* (lowercase, verb), the result is an *Act* (uppercase, noun) of Congress.

But there is a subtle difference between saying that "an *act* of Congress *violated* the Constitution" and saying that "an *Act* of Congress *violates* the Constitution." The former (lowercase, past tense) properly focuses on *Congress*, its *action* in making the law, and the moment in the past when it was made; the latter (uppercase, present tense) erroneously focuses on the statute itself in the present, as though the statute were the culprit and its offense ongoing. Thus, in discussing legislative action, usage has varied from the analytically correct (*this "action" of Congress violated the Constitution*), see, e.g., *U.S. Dep't of Commerce* v. *Montana*, 503 U.S. 442, 459 (1992) ("[T]oday we review the *actions* of Congress.") (emphasis added), to the ambiguous (*this "act/Act" of Congress violated/violates the Constitution*), see, e.g., *United States* v. *Realty Co.*, 163 U.S. 427, 439 (1896) ("It is true that in general *an unconstitutional act of Congress* is the same as if there were no *act*.") (emphasis added), to the incorrect (*this "statute" violates the Constitution*), see, e.g., *Kansas* v. *Marsh*, 548 U.S. 163, 165–66 (2006) ("We must decide whether this *statute* violates the Constitution.") (emphasis added).

The confusion is compounded by the notion of "challenging a statute as-applied." This formulation, more than any other, has engendered confusion about the *who* of constitutional violation and thus the structure of judicial review. To speak of a challenge to "a statute" may sound like a euphemistic way of describing a challenge to the action—or the "Act"—of the legislature in making it. But saying that the challenge is to the statute "as-applied" seems to suggest that the executive—who decided how to apply the statute—is somehow to blame.

When a statute is challenged "as-applied," who has allegedly violated the Constitution?

To say that a statute—or, in this case, an ordinance—violates the Constitution is not merely harmless euphemism. This formulation tends to perpetuate a misleading pathetic fallacy. Statutes and ordinances do not violate the Constitution any more than guns commit murder. Judicial review is not the review of statutes at large; judicial review is constitutional review of governmental *action*. See *The Federalist No. 78*, at 465 (Alexander Hamilton) (Clinton Rossiter ed., 2003) (referencing "courts of justice, whose duty it must be to declare all *acts* contrary to the manifest tenor of the Constitution void") (emphasis added); 1 Joseph Story, *Commentaries on the Constitution of the United States* § 542, at 405 (Melville M. Bigelow ed., William S. Hein 1994) (1833) ("[The judiciary faces] the constant necessity of scrutinizing the *acts* of [the other branches] . and the painful duty of pronouncing judgment, that these *acts* are a departure from the law or constitution ") (emphasis added); see also *Nixon* v. *United States*, 506 U.S. 224, 238 (1993) ("[C]ourts possess power to review either legislative or executive *action* that transgresses identifiable textual limits.") (emphasis added); Alexander M. Bickel, *The Least Dangerous Branch* 1 (2d ed. 1986) ("The power which distinguishes the Supreme Court of the United States is that of constitutional review of *actions* of the other branches of government, federal and state.") (emphasis added). Government actors violate the Constitution. And the structure of judicial review—facial or as-applied—turns on which one committed the violation.

This is not a mere linguistic or grammatical point, but a deep structural implication of popular sovereignty, federalism, and separation of powers. Indeed, it is one of the principal structural differences between the United States Constitution and the government that the Framers left behind. As James Madison himself emphasized:

> In the British government, the danger of encroachments on the rights of the people is understood to be confined to the executive magistrate Hence . all the ramparts for protecting the rights of the people,—such as their Magna Charta, their bill of rights, &c., —are not reared against the Parliament, but against the royal prerogative.

James Madison, *Report on Virginia Resolutions* (1800), *reprinted in* 4 *Debates in the Several State Conventions on the Adoption of the Federal Constitution* 546, 569 (Jonathan Elliott ed., J.B. Lippincott & Co. 1876).

So in Great Britain, there was only one possible answer to the *who* question. But

> [i]n the United States, the case is altogether different. The people, not the government, possess the absolute sovereignty. The legislature, no less than the executive, is under limitations of power. Encroachments are regarded as possible from the one as well as from the other. Hence, in the United States, the great and essential rights of the people are

> secured against legislative as well as executive ambition.

Id. at 569.

Every government official is bound by the Constitution. "[United States] Senators and Representatives , and the Members of the several State Legislatures, and all executive and judicial Officers, both of the United States and of the several States, [are] bound by Oath or Affirmation, to support th[e] Constitution ." U.S. Const. art. VI, cl. 3. It binds them all, and any of them might violate it. Any branch of state or federal government could be the answer to the *who* question.

But—and this is the crucial point—*the Constitution restricts these different actors differently*. Some constitutional clauses restrict the actions of Congress; others restrict the actions of the President; still others restrict the actions of the judiciary; yet others restrict the actions of the corresponding branches of state governments. These restrictions differ in their subject matter from clause to clause. But even more important, they differ in their fundamental form. Each clause is carefully tailored, not only to its subject matter, but also to its *subject*—that is, to the governmental actor that it addresses and binds.

Chief Justice Marshall knew that the rights provisions of the Constitution, no less than the structural provisions, have specific *objects*—that they bind some government actors and not others. He emphasized that the *who* question is "of great importance," see *Barron* v. *Baltimore*, 32 U.S. 243, 247 (1833), and explained: "[The Constitution] organizes the gov-

ernment, assigns, to different departments, their respective powers [and] establish[es] certain limits not to be transcended by those departments [T]hose limits . confine *the persons on whom they are imposed.*" *Marbury* v. *Madison*, 5 U.S. (1 Cranch) 137, 176 (1803) (emphasis added).

In short, different clauses apply to different government actors. As Chief Justice Marshall knew, this is a fundamental structural feature of our Constitution, reflecting the Framers' deep insight that each branch and level of government poses different and distinct threats to individual liberty. And it is essential to identify the constitutional culprit, because judicial review of a legislative act is entirely different—formally, structurally, temporally different—from judicial review of an executive act.

And this is the heart of the distinction between facial and as-applied challenges. So, to determine whether a facial challenge is permissible under the Fourth Amendment, one need only determine who is bound by that Amendment. Because the Fourth Amendment restricts the paradigmatically *executive* actions of searching and seizing, a Fourth Amendment challenge is always and inherently as-applied.

II. THE FOURTH AMENDMENT WAS NOT VIOLATED WHEN LOS ANGELES PASSED ITS ORDINANCE; IT IS VIOLATED, IF AT ALL, WHEN AN OFFICER EXECUTES A PARTICULAR UNREASONABLE SEARCH

A violation of the Constitution is an *event*. It has a beginning and an end. There is a span of time before the constitutional violation. There is a span of time after the violation. And there is a moment when

the action that violates the Constitution actually happens. This is the *when* of constitutional violation. *Every constitutional violation must be located in time.*

The answer to the *when* question follows directly from the answer to the *who* question. Consider, for example, typical circumstances in which a legislature has made a law and the executive has executed it. Two governmental actors have acted, so there are two potential constitutional culprits. The legislature may have violated the Constitution by enacting the law, or the executive may have violated the Constitution by executing it. To know *when*, it is necessary to know *who*.

It may be that the legislature violated the Constitution, simply by enacting the statute. If so, it must be that the moment of violation was *when the legislature made the law*. This is true as a matter of simple temporal logic. Per the arrow of time, the legislature could not have violated the Constitution *before* it made the law at issue. Nor could it somehow have violated the Constitution *after* it made the law. To be sure, after the law is made, it may go on to have pernicious *effects*—particularly when it is executed—and those effects may require remedy. See *The Federalist No. 50*, at 315 (James Madison) (Clinton Rossiter ed., 2003) (distinguishing between legislative "abuses"—"breaking through the restraints of the Constitution"—and the subsequent "mischievous effects" of such abuses). But by then, the legislature may be an entirely different body. The legislators who made the law at issue may have long since retired, or passed away. It makes no sense to say that *they* violated their oaths and violated the Constitu-

tion *at the moment of enforcement*, from their beds, or their graves. Nor does it make any sense to say that the *new* legislature, as constituted at the moment of *enforcement*, somehow violated their oaths and violated the Constitution, even though these new legislators had nothing to do with *either* the enactment *or* the enforcement of the statute. It must be, then, that if the legislature violated the Constitution, then it did so *at the moment when it made the law*. Euphemistically, "the *Act* of Congress *violates* the Constitution," but to be precise, "the *act* of Congress *violated* the Constitution" in the past, on the day that Congress made the law.

By contrast, if the executive has violated the Constitution, he presumably violated the Constitution at the moment when he executed the statute. In the paradigmatic case, this might be the moment when a police officer executes an unreasonable and unwarranted search. See U.S. Const. amend. IV; *United States* v. *Verdugo-Urquidez*, 494 U.S. 259, 264 (1990) ("[A] violation of the [Fourth] Amendment is 'fully accomplished' at the time of an unreasonable government intrusion."); *United States* v. *Leon*, 468 U.S. 897, 906 (1984) ("The wrong condemned by the [Fourth] Amendment is 'fully accomplished' by the unlawful search or seizure itself . ").

If a legislature has violated the Constitution *by making a law*, it should never be the case that "the courts would benefit from further factual development of the issues." *Ohio Forestry Ass'n* v. *Sierra Club*, 523 U.S. 726, 733 (1998). Post-enactment facts should never matter to the merits of such a claim, because the constitutional violation is already complete. A pre-enforcement challenge to a legislative

action is anticipatory, in the limited sense that it is anticipating and attempting to prevent the harm of *enforcement*; but it does not anticipate the constitutional *violation*, because the violation is already complete.

By contrast, if the challenge is properly framed as a challenge to executive action—as in the Fourth Amendment context—then the constitutional violation is not consummated until the moment of execution. In this case, the merits of such a challenge will turn, crucially, on the facts of execution, because *those facts will themselves constitute the alleged violation*. Here, any pre-enforcement challenge is probably premature, precisely because "the courts would benefit from further factual development of the issues." *Id.* And here it may truly be said that the case involves "contingent future events that may not occur as anticipated, or indeed may not occur at all." *Texas* v. *United States*, 523 U.S. 296, 300 (1998) (internal quotation marks omitted). A pre-enforcement challenge to an executive action—such as an allegedly unreasonable search—is anticipatory in a far deeper sense. *Here, such a challenge actually precedes the constitutional violation itself.*

A Fourth Amendment challenge is always and inherently a challenge to executive action. An executive official must be the answer to the *who* question. The Fourth Amendment secures "one's privacy against arbitrary intrusion *by the police*." *Wolf* v. *Colorado*, 338 U.S. 25, 27 (1949), overruled on other grounds by *Mapp* v. *Ohio*, 367 U.S. 643 (1961) (emphasis added). And so, the answer to the *when* question must be: when the officer executed an unreasonable search. "Courts generally review such chal-

lenges in post-enforcement settings look[ing] at the claim in the context of an actual, not a hypothetical, search and in the context of a developed factual record of the reasons for and the nature of the search." *Warshak* v. *United States*, 532 F.3d 521, 528 (6th Cir. 2008) (en banc) (Sutton, J.) (emphasis omitted). The Fourth Amendment binds executive officials and it is violated only at the moment when they execute an unreasonable search. Thus, as explained in Part IV, a Fourth Amendment challenge must always be "as-applied."

III. FACIAL CHALLENGES ARE CHALLENGES TO LEGISLATIVE ACTION; AS-APPLIED CHALLENGES ARE CHALLENGES TO EXECUTIVE ACTION

The legislative branch and the executive branch act in entirely different ways. The constitutional provisions that bind them are different. And the structure of judicial review must reflect these fundamental differences. Judicial review of a legislative act is entirely different—formally, structurally, temporally different—from judicial review of an executive act.

This Court has rightly made clear that there are two primary forms of judicial review. This Court has called these two distinct forms of judicial review "facial challenges" and "as-applied challenges." The Court is quite right that this distinction is of great importance, but the terms themselves have proven misleading, and they have, unfortunately, confused courts and scholars alike.

What a careful reading of this Court's cases reveals is that the true distinction is at once simple

and fundamental. It is nothing other than the fundamental difference between judicial review of *legislative* action and judicial review of *executive* action. The line that this Court has implicitly drawn is actually based on *who* has allegedly violated the Constitution.

A. The Development of the Doctrine

This Court first used the exact phrases "facial challenge" and "as-applied challenge" in the 1970s. It is instructive to trace the evolution of these terms.

As noted above, courts have historically tended to eschew straightforward holdings that "Congress has violated the Constitution" or "the President has violated the Constitution," adopting instead the pathetic fallacy that "the statute violates the Constitution." This usage may have been harmless at first—a well-understood euphemism for "Congress violated the Constitution by making this law." But the euphemism took on a life of its own, and the result has been a certain confusion about the two basic forms of judicial review.

The first step, harmless in itself, was that the euphemistic formulation crept backwards into descriptions of the pleadings, which, it is now said, pose constitutional "challenges," not to "actions of Congress" or "actions of the legislature," but to "statutes" and "ordinances" themselves. This usage, which is so familiar today, was unknown to the Court for its first century.

Justice Brewer was the first Supreme Court Justice to write of a "challenge" to a "law" or a "statute," in 1892, *United States* v. *Ballin*, 144 U.S. 1, 9 (1892) (Brewer, J.) ("[T]he law, as found in the office of the

secretary of state, is beyond challenge."), early in his tenure, and he used that formulation repeatedly in his two decades on the Court. See, e.g., *South Dakota* v. *North Carolina*, 192 U.S. 286, 309 (1904); *Beals* v. *Cone*, 188 U.S. 184, 188 (1903). But his colleagues resisted this imprecise formulation, realizing that the Constitution restricts governmental *action*, and that judicial review is the review of actions, not statutes. See, e.g., *Cunnius* v. *Reading Sch. Dist.*, 198 U.S. 458, 468 (1905) (White, J.) ("It will be observed that the propositions *challenge the authority of the state to enact the statute* which formed the basis of the proceedings . ") (emphasis added).

Strikingly, not once in Justice Brewer's two decades on the Court did any other Justice independently refer to a "challenge" to a "law" or "statute." Not until 1912, two years after Justice Brewer's death, did another Justice employ Justice Brewer's imprecise phrase. See *Standard Stock Food Co.* v. *Wright*, 225 U.S. 540, 548 (1912) (Hughes, J.) ("The appellant challenges the constitutional validity of the statute ").

While Justice Brewer's euphemistic imprecision may have been harmless at first, it has ultimately fostered deep analytical confusion about the two distinct types of judicial review.

In the following decades, the Court gradually began to elucidate the two primary forms of judicial review—but its development of this idea happened in the shadow of Justice Brewer's unfortunate euphemism. In Justice Brewer's formulation, judicial review entails constitutional "challenges" to "statutes." And so, this Court chose to describe the two basic types of judicial review as "facial challenges to stat-

utes" and "as-applied challenges to statutes." The phrase "facial challenge" first appeared in an opinion of this Court in 1971, see *Lemon* v. *Kurtzman*, 403 U.S. 602, 665 (1971) (White, J., concurring in judgment) ("Although I would also reject the facial challenge to the Pennsylvania statute, I concur in the judgment ."). The phrase "as-applied challenge" first appeared in an opinion of this Court in 1974, in contradistinction to the phrase "facial challenge," see *Storer* v. *Brown*, 415 U.S. 724, 737 n.8 (1974) ("[T]he 'capable of repetition, yet evading review' doctrine, in the context of election cases, is appropriate when there are 'as applied' challenges as well as in the more typical case involving only facial attacks.").

Unfortunately, both of these terms are malapropisms, and, for this reason, the distinction between them has remained opaque. Under current doctrine, an "as-applied challenge" is somehow narrower, turning on the challenger's specific facts and implying a remedy tailored to those facts. A "facial challenge" is broader and more general, implying, somehow, that the statute is rotten to the core, and perhaps suggesting a sweeping remedial declaration that the statute is "void." But when is the former appropriate and when the latter? Indeed, what exactly do these terms—"facial" and "as-applied"—even mean?

This Court has not been entirely explicit about the distinction, but what a careful reading of the cases reveals is that the ultimate answer to this doctrinal riddle is at once simple and fundamental. It simply turns on *who* has allegedly violated the Constitution.

B. Facial Challenges Are Challenges To Legislative Action

As discussed, in some circumstances, legislatures can violate the Constitution. For example, some clauses of the Constitution are written in the active voice, with "Congress" as their only subject; at least if one of these clauses is at issue, then Congress must be the answer to the *who* question. And if the answer to *who* is Congress, then the answer to *when* must be *when Congress made the law*.

But at the moment of the law's making, there has been no enforcement, and there are no facts about the application of the statute. At that moment, there is only the text of the statute and the text of the Constitution. And so, if Congress has violated the Constitution at that moment, *the violation must inhere in the text of the statute itself*. It must be theoretically possible, at that moment, "to lay the article of the Constitution which is invoked beside the statute which is challenged and to decide whether the latter squares with the former." *United States* v. *Butler*, 297 U.S. 1, 62 (1936).

To take a simple example, the First Amendment provides that "Congress shall make no law abridging the freedom of speech, or of the press." U.S. Const. amend. I. On July 14, 1798, despite the First Amendment, Congress made just such a law: the Sedition Act of 1798. The simple point here is that *Congress* violated the First Amendment. And the violation occurred *on July 14, 1798*, the day that it made this law. See *N.Y. Times Co.* v. *Sullivan*, 376 U.S. 254, 273–76 (1964). The *who* was *Congress*. The *when* was *the moment of en-*

actment. And thus, inevitably, the *how* was visible *on the face of the statute*.

Thus, the answer to the *who* question dictates the structure of judicial review. *A challenge to an action (or "Act") of Congress must be "facial."* It makes no sense to speak of "as-applied" challenges to legislative actions, because the challenged action is complete before the application begins. See *Hacienda Valley Mobile Estates* v. *City of Morgan Hill*, 353 F.3d 651, 655 (9th Cir. 2003) ("a facial challenge by its nature does not involve a decision applying the statute or regulation"). "In a facial constitutional challenge, individual application facts do not matter. Once standing is established, the plaintiff's personal situation becomes irrelevant." *Ezell* v. *City of Chicago*, 651 F.3d 684, 697 (7th Cir. 2011) (citing Rosenkranz, *Subjects* 1238).

Thomas Jefferson understood all this, which is why he later pardoned everyone convicted under the Sedition Act, *regardless of what exactly they had written*: "I discharged *every person* under punishment or prosecution under the sedition law, because I considered, and now consider, that law to be *a nullity* ." Letter from Thomas Jefferson to Mrs. Adams (July 22, 1804), *in* 4 *The Writings of Thomas Jefferson* 555, 555–56 (H.A. Washington ed., 1854) (emphasis added).

Because Congress is the subject of the clause, the inquiry is inherently facial, and individual facts cannot matter; no one can rightly be prosecuted under such a "law."

Or, to take another example, consider this Court's recent Commerce Clause jurisprudence. This Court

has emphasized that it generally considers facial challenges to be a "disfavored" exception to the rule. See *Wash. State Grange* v. *Wash. State Republican Party*, 552 U.S. 442, 450 (2008); see also *Gonzalez* v. *Carhart*, 550 U.S. 124, 168 (2007) (Thomas, J., concurring) (as-applied challenges are the "building blocks" of constitutional adjudication). But in the Commerce Clause context, the opposite appears to be true. *United States* v. *Lopez*, 514 U.S. 549 (1995), and *United States* v. *Morrison*, 529 U.S. 598 (2000), were both apparently facial challenges. See *Gonzales* v. *Raich*, 545 U.S. 1, 23 (2005) ("[I]n both *Lopez* and *Morrison*, the parties asserted that a particular statute or provision fell outside Congress' commerce power in its entirety."). But no Justice objected on that ground or purported to apply the "no set of circumstances" test. See *United States* v. *Salerno*, 481 U.S. 739, 745 (1987). To the contrary, in the next case, the Court seemed to disfavor Ms. Raich's claim precisely because it, unlike *Lopez* and *Morrision*, was "as-applied." See *Raich*, 545 U.S. at 8; see also *Perez* v. *United States*, 402 U.S 146, 154 (1971) ("Where the class of activities is regulated and that class is within the reach of federal power, the courts have no power to excise as trivial, individual instances of the class.") (internal quotation marks omitted) (emphasis omitted). As Justice Scalia explains: "[w]hen . a federal statute is challenged as going beyond Congress's enumerated powers, under our precedents the court first asks whether the statute is unconstitutional on its face." *Nev. Dep't of Human Res.* v. *Hibbs*, 538 U.S. 721, 743 (2003) (Scalia, J., dissenting) (emphasis omitted).

At first glance, this may seem like a doctrinal anomaly, but once one focuses on the *who* question, it

is easy to see that this is not anomalous at all. A Commerce Clause challenge is inherently a challenge to *legislative* action—a claim that *Congress* exceeded its legislative power. The answer to *who* is Congress. The answer to *when* is when Congress made the law. So any violation must be visible on the face of the statute, *lex ipsa loquitur*, and subsequent facts do not alter the inquiry. *Raich*, 545 U.S. at 29 n.38 ("California's decision (made 34 years after the [Controlled Substances Act] was enacted) to impose strict controls on the cultivation and possession of marijuana for medical purposes cannot retroactively divest Congress of its authority under the Commerce Clause.") (citation omitted). A claim that Congress violated the Constitution by making a law, when it made the law, is inherently a facial challenge. Again:

> When *an act of Congress* is appropriately challenged in the courts as not conforming to the constitutional mandate, the judicial branch of the government has only one duty,—to lay the article of the Constitution which is invoked beside the statute which is challenged and to decide whether the latter squares with the former.

Butler, 297 U.S. at 62 (emphasis added).

This is the core concept of a "facial challenge." The notion of a challenge to a statute—or an ordinance—is a deceptive euphemism; the challenge is to the *action* of a governmental actor. And a "facial challenge," in particular, is a challenge to the action of a *legislature*. But the key word, "facial," points in the right direction. These challenges are "facial" in the important sense that, under these circumstances,

the constitutional violation must be visible on the *face* of the statute. If a legislature has violated the Constitution by making an impermissible law, then it has violated the Constitution at the moment of making the law. And so, it must be possible to identify a constitutional flaw on the face of the statute itself. Thus, *a "facial challenge" is nothing more nor less than a claim that a legislature has violated the Constitution.*[4]

In short, facial challenges are to constitutional law what res ipsa loquitur is to facts—in a facial challenge, *lex ipsa loquitur*: the law speaks for itself.

C. "As-Applied" Challenges Are Challenges To Executive Action

This Court disfavors "facial challenges to statutes" and prefers "as-applied challenges to statutes." See *Wash. State Grange*, 552 U.S. at 450. But this latter phrase is also a bit of a malapropism. Again, the foundational error, born of euphemistic usage, is the suggestion that the statute, rather than the action of a governmental actor, has violated the Constitution. But, here, the error is compounded by the odd suggestion that the challenge is to the statute "as-applied." This phrase, more than any other, has engendered profound confusion about the *who* of judicial review. If someone "challenges a statute as-applied," whom does he allege to have violated the Constitution?

As discussed above, if a legislature has violated the Constitution by making a law, then the violation

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[4] Petitioner makes a version of this point. See Pet'r's Br. 26 (citing Rosenkranz, *Subjects* 1239–41).

occurred at the moment of the making of the law, and it should be possible to identify the violation at that moment, on the face of the statute. This is the idea that the Court has been alluding to with its doctrine of "facial challenges."

But, as this Court has made clear, that will be the more unusual case. See *Salerno*, 481 U.S. at 745 ("A facial challenge to a legislative Act is, of course, the most difficult challenge to mount successfully, since the challenger must establish that no set of circumstances exists under which the Act would be valid."). More often the clause at issue will bind executive officials, like police officers, and so they will be the answer to the *who* question. They will have violated the Constitution, *in the application of the law*. And the answer to the *when* question follows: the violation will have occurred *at the moment of execution*.

For example, "[a] person is seized by the police and thus entitled to challenge the government's action under the Fourth Amendment when the officer, 'by means of physical force or show of authority,' terminates or restrains his freedom of movement[.]" *Brendlin* v. *California*, 551 U.S. 249, 254 (2007). See also *Michigan Dep't of State Police* v. *Sitz*, 496 U.S. 444, 450 (1990) ("a Fourth Amendment 'seizure' occurs when a vehicle is stopped at a checkpoint."). In this context, the violation will *not* be visible on the face of a statute. Indeed, *the act of the legislature will not itself be a constitutional violation*. "Congress did not violate the Constitution when it passed the law, but the Executive Branch might violate the Constitution in individual circumstances depending on how the law is applied." *Diop* v. *ICE/Homeland Security*, 656 F.3d 221, 232 n.10 (3d Cir. 2011) (citing

Rosenkranz, *Subjects* 1230–35). Here, unlike in a "facial challenge," the facts of execution *will* be relevant to an assessment of the merits—indeed, here, those facts will *be* the constitutional violation.

This is what is properly meant by an "as-applied challenge to a statute." In these cases, it is the *application* of the statute that violates the Constitution. These challenges should perhaps be called "as-executed challenges" or, better, simply "execution challenges," to gesture more clearly toward executive officials. If the execution of a statute is unconstitutional (because, for example, it involves an unreasonable search), then it is the executive who has violated the Constitution.

In short, the most common form of judicial review—the kind that the Court has called "as-applied challenges to statutes"—is not the review of actions (or "Acts") of Congress at all. See 1 Norman J. Singer, *Statutes and Statutory Construction* § 2:6, at 44 (6th ed. 2002) ("Sometimes it is said of a statute which is not void 'on its face' that it nevertheless is invalid as applied. This is a malapropism, however, for a provision which is only invalid as applied in the facts of a particular case is possibly capable of valid application in another fact situation. In reality, it is only the implementing action which purports to apply the legislation and not the provision itself which is invalid in such cases.") (citations omitted). This most common form of judicial review is nothing other than constitutional review of *executive* action. Just as "facial challenges" are challenges to actions (or "Acts") of legislatures, "as-applied challenges" are challenges to actions of executive officials.

IV. FOURTH AMENDMENT CHALLENGES ARE CHALLENGES TO EXECUTIVE ACTION, AND SO THEY ARE INHERENTLY "AS-APPLIED"

The Fourth Amendment, like most of the Bill of Rights, is written in the passive voice, so it does not specify who may violate it. But text and structure strongly suggest that the Fourth Amendment is concerned with executive and judicial actions rather than legislative actions.

> The right of the people to be secure in their persons, houses, papers, and effects, against unreasonable searches and seizures, shall not be violated, and no Warrants shall issue, but upon probable cause, supported by Oath or affirmation, and particularly describing the place to be searched, and the persons or things to be seized.

U.S. Const. amend. IV.

The first clause of the Amendment prohibits the executive act of unreasonable *searching*, not the act of *authorizing unreasonable searches*. As the Court has said, "[t]he wrong condemned by the [Fourth] Amendment is 'fully accomplished' *by the unlawful search or seizure itself*." *United States* v. *Leon*, 468 U.S. 897, 906 (1984) (emphasis added). And the second, Warrants Clause of the Amendment, which *is* concerned with the authorizing of searches, is directed not at Congress but at the Judiciary.

Another way to see the point is to compare the Fourth Amendment with the many constitutional provisions that *do* concern legislative action. Actions

associated with Congress are, by their nature, legislative. When Congress is the subject, the predicates are generally "legislative" predicates—"make law," synonyms for "make law," or jurisdictional actions that can be fully accomplished by the making of a law. This is true of provisions that empower Congress, like Article I, Section 8 ("Congress shall have Power [t]o *make* all *Laws* which shall be necessary and proper[,]" U.S. Const. art. I, § 8, cls. 1, 18 (emphasis added)) and it is true of provisions that restrict Congress, like the First Amendment ("Congress shall *make* no *law*[,]" *id.* amend. I (emphasis added)). And the same principle applies in the passive voice. The Ex Post Facto Clause, for example, is written in the passive voice, with no explicit answer to the *who* question. But the legislative nature of the subjects and verb answers the question: "No *Bill* of Attainder or ex post facto *Law* shall be *passed*." *Id.* art. I, § 9, cl. 3 (emphasis added). This provision, like the First Amendment, is a restriction on Congress. See, e.g., *Marks* v. *United States*, 430 U.S. 188, 191 (1977) ("The Ex Post Facto Clause is a limitation upon the powers of the Legislature[.]")

But the first clause of the Fourth Amendment does not read like a legislative prohibition. It does not follow the active-voice, First Amendment model; it does not say: "Congress shall make no law authorizing unreasonable searches and seizures." And it does not follow the passive-voice, Ex Post Facto Clause model; it does not say: "No law authorizing unreasonable searches and seizures shall be passed." The First Amendment is violated by making a law. The Ex Post Facto Clause is violated by passing a law. By contrast, the Fourth Amendment is not violated by making a law; it is violated by *executing an*

unreasonable search or seizure. Searches and seizures are paradigmatic executive actions. See *United States* v. *Grubbs*, 547 U.S. 90, 98 (2006) (referring to searches as "exercise[s] of executive power"). A legislature might purport to *authorize* a Fourth Amendment violation, but it cannot actually *commit* a Fourth Amendment violation. See *United States* v. *Karo*, 468 U.S. 705, 712 (1984) (Court has "never held that potential, as opposed to actual, invasions of privacy constitute searches[.]"). "The [Fourth] Amendment has always prohibited specific [executive] government conduct—'unreasonable searches and seizures'—not legislation that could potentially permit such conduct." *Patel* v. *City of Los Angeles*, 738 F.3d 1058, 1066 (9th Cir. 2013) (Tallman, J., dissenting).

To put the point another way, one can identify the object of a provision of the Bill of Rights by identifying the corresponding constitutional *power* that is limited by the provision. The Fourth Amendment is not a gloss on Article I, like the First Amendment; it is, rather, a gloss on the Take Care Clause of Article II: "[The President] shall take Care that the Laws be faithfully executed . " U.S. Const. art. II, § 3. If Congress criminalizes certain conduct, the President might have believed that faithful execution of such a statute requires indiscriminate searches to root out the forbidden conduct. But the Fourth Amendment glosses the adverb "faithfully," forbidding the President from taking this approach. In other words, the Fourth Amendment is not an *absolute* prohibition on *legislative* action, like the First Amendment. It is, instead, a *conditional, judicial* check on *executive* action. See, e.g., *McDonald* v. *United States*, 335 U.S. 451, 453 (1948) (The Fourth Amendment "stays the

hands of the police unless they have a search warrant issued by a magistrate on probable cause supported by oath or affirmation."). In this sense, the Fourth Amendment—like much of the Bill of Rights, see generally Akhil Reed Amar, *The Bill of Rights: Creation and Reconstruction* (2000), including the Due Process Clause, see *United States* v. *Jones*, 689 F.3d 696, 703 (7th Cir. 2012) (citing Rosenkranz, *Objects* 1041–43)—is a separation of powers provision. The Fourth Amendment is a calibration of executive and judicial power; it does not concern legislative power.

If the first clause of the Fourth Amendment were to be read non-literally, to bind Congress, it would presumably mean something like: "No unreasonable searches or seizures shall be *authorized*." But this non-literal interpretation would run headlong into the second half of the Fourth Amendment, which *is* expressly about authorizing searches, via warrant. Reading the two clauses together, it is clear that the first concerns the actual executive acts of *searching* and *seizing*, while the second concerns the *authorizing* of searches and seizures. For the first clause of the Fourth Amendment, the answer to the *by whom* question is the executive. An action—or act—of a legislature cannot violate this clause, because the legislature is not the object of the clause. Only the executive can violate the Searches and Seizures Clause.

If the executive is the answer to the *who* question, then the answer to the *when* question must be *when an executive officer searches or seizes*. A facial challenge to a statute or ordinance is untenable under this clause, for the simple reason that the clause has nothing to do with actions of legislatures.

And so, there is a fundamental structural difference between challenges to *executive* action (for example, a claim that an executive violated the Fourth Amendment by executing a search) and challenges to *legislative* action (for example, a claim that Congress violated the First Amendment by making a law). As discussed above, Thomas Jefferson realized that the merits of a First Amendment challenge to, for example, the Sedition Act should turn not at all on what any particular defendant actually wrote. The constitutional violation was complete on July 14, 1798, when Congress made the Sedition Act, before any defendant took pen to paper. In that case, the challenge is "facial" and *lex ipsa loquitur*—the enforcement facts are irrelevant and the law speaks for itself.

But in the Fourth Amendment context, the reverse is true: the statute or ordinance matters little if at all, while the enforcement facts are crucial. The ordinance does not much matter to the merits, because an unreasonable search would be a Fourth Amendment violation with or without it. But the litigation will very much turn on the defendant's specific facts—what exactly was searched, and when, and where. Here the enforcement facts do not postdate the constitutional violation; here the enforcement facts *are* the constitutional violation.

This Court has made all of these points in various cases, and its Fourth Amendment doctrine is almost entirely consistent with this analysis. So, for example, this Court was quite right to hold that "the Fourth Amendment[] protect[s] against unreasonable searches and seizures *by federal agents*." *Bivens* v. *Six Unknown Named Agents of Fed. Bureau of Narcotics*, 403 U.S. 388, 391 (1971) (emphasis added).

See also *Wolf* v. *Colorado*, 338 U.S. 25, 27 (1949) (The Fourth Amendment secures "one's privacy against arbitrary intrusion *by the police*.") (emphasis added), overruled on other grounds by *Mapp* v. *Ohio*, 367 U.S. 643 (1961). This is the correct answer to the *who* question. And it was quite right to hold that "[t]he wrong condemned by the [Fourth] Amendment is 'fully accomplished' by the unlawful search or seizure itself." *Leon*, 468 U.S. at 906; cf. *Byars* v. *United States*, 273 U.S. 28, 33 (1927) (holding the character of a search is determined at the moment of execution, rather than at the moment when resulting evidence is introduced). This is the correct answer to the *when* question. Thus, the Court generally and quite rightly insists on a fact-specific, "as-applied" approach to the merits, focusing on the execution of the search itself, rather than an abstract, "facial" approach, focused on an authorizing statute:

> The parties have urged that the principal issue before us is the constitutionality of [an authorizing statute] "on its face." We decline to be drawn into what we view as the abstract and unproductive exercise of laying the extraordinarily elastic categories of [the statute] next to the categories of the Fourth Amendment in an effort to determine whether the two are in some sense compatible. The constitutional validity of a warrantless search is preeminently the sort of question which can only be decided in the concrete factual context of the individual case.

Sibron v. *New York*, 392 U.S. 40, 59 (1968). See also *Dow Chem Co.* v. *United States*, 476 U.S. 227, 239 n.5 (1986) ("Fourth Amendement cases must be decided on the facts of each case, not by extravagant generalizations."); *Karo*, 468 U.S. at 712 (Court has "never held that potential, as opposed to actual, invasions of privacy constitute searches.").

All this is exactly right.

When viewed through this lens, it becomes clear that some of the language in *Marshall* v. *Barlow's, Inc.*, 436 U.S. 307 (1978), is anomalous and inconsistent with the general and sound practice of this Court. It is not quite right to say, as the Court did in that case, that the "*Act* [of Congress] is unconstitutional insofar as it purports to authorize inspections without warrant or its equivalent." 436 U.S. at 325 (emphasis added). The act of Congress did not violate the Fourth Amendment; the act of executive officers did. *Congress* cannot violate this clause by *authorizing* a search; only the *President* can violate it, and only by *executing* a search. Cf. *Illinois* v. *Krull*, 480 U.S. 340, 351 (1987) ("There is no evidence suggesting that Congress . [has] enacted a significant number of statutes *permitting* warrantless administrative *searches violative* of the Fourth Amendment.") (emphasis added). A statute might purport to "*permit[]*" an unconstitutional search, but it is the search itself, not the statute, that is "violative of the Fourth Amendment."

Happily, this exceptional case proves the rule; *Marshall* v. *Barlow's, Inc.* is *the only case in the Court's history* that has purported to strike down an action (or "Act") of Congress under the Fourth

Amendment.[5] See Cong. Research Serv., The Constitution of the United States of America: Analysis And Interpretation 1375–76, 1387–89, 2138 (2014 Supp.), *available at* http://www.gpo.gov/fdsys/pkg/GPO-CONAN-REV-2014/pdf/GPO-CONAN-REV-2014.pdf. And the handful of cases that speak loosely of challenges to state "statutes"—rather than challenges to particular executive action—are nevertheless best read as "as-applied" challenges. See *Warshak*, 532 F.3d 521, 531 (6th Cir. 2008) (en banc) (Sutton, J.) ("[I]n these cases, too, the Court reviewed applications of statutes in concrete settings—motions to suppress that sought to prevent the information obtained in a search from being used against the defendant.") (citing *Payton* v. *New York*, 445 U.S. 573, 576–79, 589–90 (1980); *Torres* v. *Puerto Rico*, 442 U.S. 465, 467, 474 (1979)).

It is executive officials who violate the first clause of the Fourth Amendment, by executing an unreasonable search. See, e.g., *Bivens*, 403 U.S. at 391 (elaborating the "Fourth Amendment's protection against unreasonable searches and seizures *by federal agents*") (emphasis added); *Wolf*, 338 U.S. at 27 (The Fourth Amendment secures "one's privacy against arbitrary intrusion *by the police*.") (emphasis added). An action—or "Act"—of a legislature cannot violate the Search and Seizures Clause; only an executive action can.

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[5] The only other possible example appears to be *Boyd* v. *United States*, 116 U.S. 616 (1886), but that case—no model of clarity—expressly conflates the Fourth and Fifth Amendments, and it does not clearly state which one forbade the making of the law at issue. See 116 U.S. at 630 ("[T]he Fourth and Fifth Amendments run almost into each other.").

This is why it is impossible to adjudicate a Fourth Amendment case when no actual search or seizure is before the Court. A constitutional claim under the first clause of the Fourth Amendment is never a "facial" challenge, because it is always and inherently a challenge to executive action.

CONCLUSION

The Ninth Circuit's judgment should be reversed.

Respectfully submitted,

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CITY OF LOS ANGELES,

Petitioner,

v.

NARANJIBHAI PATEL, RAMILABEN PATEL, LOS ANGELES LODGING ASSOCIATION,

Respondents.

ON WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE NINTH CIRCUIT

BRIEF *AMICI CURIAE* OF THE NATIONAL LEAGUE OF CITIES, THE U.S. CONFERENCE OF MAYORS, THE NATIONAL ASSOCIATION OF COUNTIES, THE INTERNATIONAL CITY/COUNTY MANAGEMENT ASSOCIATION, AND THE INTERNATIONAL MUNICIPAL LAWYERS ASSOCIATION IN SUPPORT OF PETITIONER

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INTEREST OF *AMICI CURIAE*[1]

The National League of Cities (NLC) is the oldest and largest organization representing municipal governments throughout the United States. Its mission is to strengthen and promote cities as centers of opportunity, leadership, and governance. Working in partnership with 49 State municipal leagues, NLC serves as a national advocate for the more than 19,000 cities, villages, and towns it represents.

The U.S. Conference of Mayors (USCM), founded in 1932, is the official nonpartisan organization of all United States cities with a population of more than 30,000 people, which includes over 1,200 cities at present. Each city is represented in the USCM by its chief elected official, the mayor.

The National Association of Counties (NACo) is the only national organization that represents county governments in the United States. Founded in 1935, NACo provides essential services to the nation's 3,069 counties through advocacy, education, and research.

The International City/County Management Association (ICMA) is a nonprofit professional and educational organization of over 9,000 appointed chief executives and assistants serving cities, counties, towns,

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1. No counsel for any party authored this brief in whole or in part and no entity or person, other than *amici curiae*, their members, and their counsel, made any monetary contribution toward the preparation or submission of this brief. Counsel of record for all parties have consented to this filing in letters on file with the clerk's office.

and regional entities. ICMA's mission is to create excellence in local governance by advocating and developing the professional management of local governments throughout the world.

The International Municipal Lawyers Association (IMLA) has been an advocate and resource for local government attorneys since 1935. Owned solely by its more than 3,000 members, IMLA serves as an international clearinghouse for legal information and cooperation on municipal legal matters.

This case directly impacts the interests of *amici* and their members. Cities and localities across the country have enacted and administer ordinances that require hotel registers and authorize law enforcement officials to inspect them. Upholding the decision below would threaten the invalidation of these ordinances and call into question the many ordinances imposing similar requirements on other types of businesses. *Amici* thus have a strong interest in this case.

INTRODUCTION AND SUMMARY OF ARGUMENT

For more than a century, Petitioner, the City of Los Angeles, has had on its books an ordinance requiring hotels to record and maintain certain specified information about their guests in a register and to make those guest registers available for inspection to law enforcement officers. Brief for Petitioner ("Pet. Br.") 4-8. The current iteration of that ordinance resides in Section 41.49 of the Los Angeles Municipal Code, the stated purpose of which is to "discourag[e] the use of hotel and motel

rooms for illegal activities, particularly prostitution and narcotics offenses." L.A., Cal., Ordinance 177966 (Oct. 6, 2006). Amended in 2006 to address the growing scourge of illicit activity at parking-meter motels, *see* Pet. Br. 6, Section 41.49 requires any hotel (defined broadly as any "inn, hostelry, tourist home, motel, lodging house or motel rooming house") to maintain a register that records the following basic information about each guest: name; address; make, model, and license plate number of any guest vehicle parked on hotel premises; date and time of arrival and scheduled departure; room number; rate charged; and method of payment. *See id.* The ordinance further requires hotels to record additional information from walk-ins as well as from guests who pay in cash or rent a room by the hour or for a period of less than 12 hours. *See id.*

The Ninth Circuit invalidated Section 41.49 on its face under the Fourth Amendment because the ordinance authorized hotel register inspections "without affording an opportunity to obtain judicial review of the reasonableness of the demand prior to suffering penalties for refusing to comply." Petitioner's Appendix ("Pet. App.") 13. That ruling is legally unsustainable. Among its errors, the court "erroneously assumed one hypothetical set of facts that it thought § 41.49 appears to contemplate" rather than considering the myriad "different fact-bound scenarios" under which an inspection of a hotel register might arise. Pet. Br. 13. Further, the court focused myopically on whether Section 41.49 qualified for the Fourth Amendment "administrative subpoenas" exception even though it "is not the only exception to the warrant requirement recognized under the Fourth Amendment, let alone the only basis for upholding a warrantless search on the

ground that it was not unreasonable." Pet. App. 27-28 (Clifton, J., dissenting).

These criticisms of the Ninth Circuit's ruling follow from a foundational structural principle of judicial review: facial challenges, are disfavored as a general matter and should be especially disfavored in the Fourth Amendment arena. As a doctrinal matter, there is a sharp incongruity between a facial challenge to an ordinance and the Fourth Amendment's touchstone of reasonableness. After all, assessing a search's reasonableness depends on the particular circumstances under which it takes place and is thus "pre-eminently the sort of question which can only be decided in the concrete factual context of the individual case." *Sibron v. New York*, 392 U.S. 40, 59 (1968). But a facial challenge is divorced from context; it occurs in a factual vacuum and requires an isolated evaluation of the ordinance itself. The obvious disconnect between the two is precisely why this Court has observed that evaluating a facial challenge to a statute or ordinance in the Fourth Amendment arena would be an "abstract and unproductive exercise." *Id.*; *see also id.* at 62 ("Our constitutional inquiry would not be furthered here by an attempt to pronounce judgment on the words of the statute.").

In light of this incongruity, it should come as no surprise that facial challenges are of little practical utility in the Fourth Amendment arena. "[A] plaintiff can only succeed in a facial challenge by 'establish[ing] that no set of circumstances exists under which the Act would be valid.'" *Washington State Grange v. Washington State Republican Party*, 552 U.S 442, 449 (2008) (quoting *United States v. Salerno*, 481 U.S. 749, 745 (1987)). Given the seemingly endless array of circumstances that may

prompt a law enforcement officer to conduct a search, there will nearly always be some set of facts that would justify a particular search as reasonable. Indeed, as Petitioner emphasizes, "this Court has never invalidated a statute as authorizing unreasonable searches or seizures based on a bare Fourth Amendment challenge, like this one, without any factual record and without any challenge to the law's implementation in a concrete setting." Pet. Br. 14. There is no justification for breaking new ground here given that the Ninth Circuit and Respondents concede that factual scenarios exist under which Section 41.49 is lawful. Brief in Opposition ("BIO") 5 ("The court recognized that the absence of pre-compliance judicial review would not necessarily render every search unreasonable under the Fourth Amendment.").

Not only would sustaining the Ninth Circuit's ruling cause jurisprudential upheaval, it would also threaten to upend numerous similar ordinances across the country and thus impair the ability of states and localities to prevent and combat crime. On top of that, it would call into question numerous similar record-keeping and inspection laws applicable to other businesses, such as mobile home parks, junkyards, and pawn shops. Such a massive override of democratic governance would seriously "frustrate[] the intent of the elected representatives of the people." *Washington State Grange*, 552 U.S. at 451 (citation omitted). Perhaps worse, the practical effect of sustaining the decision below would be to hamstring state and local crime prevention efforts. Indeed, recent evidence demonstrates that several hotels within the City of Los Angeles have faced a sharp increase in criminal activity in the time since the decision below rendered Section 41.49 inoperative. The decision below should be reversed.

ARGUMENT

I. Facial Challenges Should Be Especially Disfavored In The Fourth Amendment Arena.

Facial challenges are disfavored as a general matter for many reasons. *See Washington State Grange*, 552 U.S. at 450. First, they risk "premature interpretation" of laws because courts must speculate about facts that may or may not occur. *Id.* (citation omitted). Second, they run contrary to the principle of constitutional avoidance. *See id.* ("[C]ourts should neither 'anticipate a question of constitutional law in advance of the necessity of deciding it' nor 'formulate a rule of constitutional law broader than is required by the precise facts to which it is to be applied.'") (citation omitted). Third, facial challenges override democratic governance by invalidating a duly enacted law in *every* aspect. *See id.* at 451 ("We must keep in mind that [a] ruling of unconstitutionality frustrates the intent of the elected representatives of the people.") (citation omitted).

The concerns apply with special force when the facial challenge arises under the Fourth Amendment. By its terms, the Fourth Amendment inquiry turns on the *reasonableness* of a search or seizure. This necessarily requires a fact-based determination of whether the law-enforcement concerns underlying a search or seizure override the affected individual's interests. Such a fact-bound inquiry is simply incompatible with the abstract review a facial challenge demands. But even if these ill-fitting concepts could be reconciled as a doctrinal matter, facial challenges make no practical sense in the Fourth Amendment arena. A facial challenge can succeed only if it

is unconstitutional in *every circumstance*. Few, if any, laws authorizing searches would fall under this high standard given the myriad factual circumstances that might arise and the numerous exigencies prompting law enforcement officials to undertake a search.

A. As A Doctrinal Matter, Facial Challenges Cannot Be Squared With The Fourth Amendment's Standard Of Reasonableness.

The Fourth Amendment protects the "right of the people to be secure in their persons, houses, papers, and effects." It does so by prohibiting all "unreasonable" governmental searches and seizures. Thus, the question is always "whether the search [or seizure] was *reasonable* under the Fourth Amendment." *Sibron*, 392 U.S. at 61 (emphasis added); *see Maryland v. King*, 133 S. Ct. 1958, 1970 (2013) ("The touchstone of the Fourth Amendment is reasonableness," and whether a warrant is required or not, the search "must be reasonable in its scope and manner of execution."); *Cooper v. California*, 386 U.S. 58, 62 (1967) ("[T]he relevant test is not whether it is reasonable to procure a search warrant, but whether the search was reasonable.") (citation omitted).

To determine whether a search is reasonable under the Fourth Amendment, courts balance "privacy-related and law enforcement-related concerns." *King*, 133 S. Ct. at 1970 (citation omitted). Specifically, this test "requires a court to weigh 'the promotion of legitimate governmental interests' against 'the degree to which [the search] intrudes upon an individual's privacy.'" *Id.* (quoting *Wyoming v. Houghton*, 526 U.S. 295, 300 (1999)); *see also*

Smith v. Maryland, 442 U.S. 735, 735 (1979).[2] Given the balance of interests the Fourth Amendment accordingly requires, a warrantless search's constitutionality "can only be decided in the concrete factual context of [an] individual case." *Sibron*, 392 U.S. at 59; *see id.* at 62 ("[W]e must confine our review ... to the reasonableness of the searches and seizures [at issue]."); *Cooper*, 386 U.S. at 59 ("[W]hether a search and seizure is unreasonable within the meaning of the Fourth Amendment depends upon the facts and circumstances of each case....").

The mode of analysis is difficult, if not impossible, to reconcile with the nature of the facial inquiry into a law's constitutionality. In reviewing a facial challenge, a court evaluates the law in the *abstract*, removed from the facts of any particular application thereof. *See Rust v. Sullivan*, 500 U.S. 173, 195 (1991) ("These cases, of course, involve only a facial challenge ... and we do not have before us any application ... to a specific fact situation."); *see* Pet. App. 17 (Tallman, J., dissenting) ("[This facial challenge leaves us with insufficient facts regarding the unconstitutional conduct [Plaintiffs] allege has occurred.").

Detached from any factual record, facial attacks just do not provide the necessary context for assessing whether a search is reasonable under the Fourth Amendment. Without such facts, courts cannot weigh the government interests against the intrusion on the individual's rights, and thus cannot determine whether the search is

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2. Because this case does not involve any alleged trespass of property, it does not implicate the "property-based approach" to Fourth Amendment searches and seizures. *United States v. Jones*, 132 S. Ct. 945, 950 (2012).

reasonable under the Fourth Amendment. That is why this Court has emphasized that "[t]he constitutional validity of a warrantless search is pre-eminently the sort of question which *can only be decided in the concrete factual context of the individual case.*" *Sibron*, 392 U.S. at 59; *see also King*, 133 S. Ct. at 1969 ("The fact that an intrusion is negligible is of central relevance to determining reasonableness.") (internal quotations omitted).

In a facial attack, the focus is on the law itself. But the Fourth Amendment proscribes *conduct*—not *words*. Pet. App. 15 (Tallman, J., dissenting) ("The [Fourth] Amendment has always prohibited specific government conduct—'unreasonable searches and seizures'—not legislation that could potentially permit such conduct."). The constitutional inquiry simply is not furthered "by an attempt to pronounce judgment on the words of the statute. [The Court] must confine [its] review instead to the reasonableness of the searches and seizures." *Sibron*, 392 U.S. at 62; *see id.* at 61 ("The question in this Court upon review of a state-approved search or seizure 'is not whether the search (or seizure) was authorized by state law. The question is rather whether the search was reasonable under the Fourth Amendment'" (quoting *Cooper*, 386 U.S. at 61); *California v. Greenwood*, 486 U.S. 35, 44 (1988) ("We have never intimated ... that whether or not a search is reasonable within the meaning of the Fourth Amendment depends on the law of the particular State in which the search occurs."). Whether a law authorizes or prohibits such conduct is thus of little, if any, import. *See Sibron*, 392 U.S. at 61.

A state or local law might authorize a search or seizure and yet the Fourth Amendment bars it. *See id.*

For example, in *Payton v. New York*, the defendants challenged the constitutionality of New York statutes that authorized police officers to enter a private residence without a warrant and with force, if necessary, to make a routine felony arrest. 445 U.S. 573, 574 (1980). The Court found the warrantless arrests at issue to be unconstitutional notwithstanding New York's statutory authorization. *See id.* at 602-03.

Conversely, a search or seizure might survive a Fourth Amendment challenge even though a state or local law *prohibits* it. *See Sibron*, 392 U.S. at 61. In *Greenwood*, for example, the Court held that the search of garbage left by an individual at the curbside of his residence did not violate the Fourth Amendment even though it possibly violated California law. 486 U.S. at 44. There, Greenwood had argued that the search of his garbage violated the Fourth Amendment because California law prohibited it. As the Court explained, however, "whether or not a search is reasonable within the meaning of the Fourth Amendment" does not "depend[] on the law of the particular State in which the search occurs." *Id.* at 43. The Fourth Amendment inquiry instead turned on the Court's own evaluation of the individual's expectation of privacy. *Id.* Because Greenwood's subjective privacy expectation was not objectively reasonable, the Court held the search constitutional irrespective of what California law might allow or prohibit. *Id.* at 43-44.

In the end, the lack of a relationship between state or local law and the Fourth Amendment inquiry makes a facial challenge untenable. It is not the law that the Court reviews when there is a Fourth Amendment challenge. It is the governmental search or seizure. And, a search or

seizure undertaken pursuant to a state or local law will arise in countless factual settings. Reviewing a state or local law in a factual vacuum thus says nothing about the reasonableness of a search undertaken by law enforcement officers. The "constitutional inquiry" simply "would not be furthered here by an attempt to pronounce judgment on the words of the statute." *Sibron*, 392 U.S. at 62. This is reason enough to reject a facial Fourth Amendment attack on Section 41.49.

B. Facial Fourth Amendment Challenges Also Make No Practical Sense Because The "No Set Of Circumstances" Standard Will Be Virtually Insurmountable.

The nature of a facial challenge renders it of little, if any, practical utility in the Fourth Amendment context. As noted above, "a plaintiff can only succeed in a facial challenge by 'establish[ing] that no set of circumstances exists under which the Act would be valid.'" *Washington State Grange*, 552 U.S at 449 (quoting *Salerno*, 481 U.S. at 745). Given the myriad possible circumstances—and exigencies—that may prompt a law enforcement officer to conduct a search, there will nearly always be some set of factual circumstances that would make a particular search reasonable. *See, e.g.*, *Salerno*, 481 U.S. at 751 ("[We] may dispose briefly of respondents' facial challenge to the procedure of the Bail Reform Act. To sustain them against such a challenge, we need only find them adequate to authorize the pretrial detention of at least some [persons] charged with crimes, whether or not they might be insufficient in some particular circumstances.") (citation omitted).

This case proves the point. There are countless scenarios where a warrantless search of a hotel register would be reasonable under the Fourth Amendment. Police may be trying to locate a suicidal person who is suspected of being in the hotel and could ask for the register under their "community care-taking exception." Pet. App. 18a (Tallman, J., dissenting). The hotel register might be fully accessible to the public or otherwise within a law enforcement officer's "plain view." *Kentucky v. King*, 131 S. Ct. 1849, 1858 (2011). A warrantless search of a hotel register also may be justified by "exigent circumstances." Pet. App. 18a (Tallman, J., dissenting). For example, law enforcement officials could be trying to locate a suspected terrorist who they believe is hiding in the hotel. Indeed, the ordinance itself seems to contemplate such exigencies. By providing that, "*whenever possible*, the inspection shall be conducted at a time and in a manner that minimizes any interference with the operation of the business," Los Angeles, Cal. Code § 41.49 (emphasis added), it suggests that there will be times when the search will need be conducted under circumstances that do not allow police officers to minimize the intrusion.

There are many other examples as well. But the point is this: the Court need only agree that one of these (or the many other) hypothetical scenarios would allow a warrantless search of a hotel register to reject this facial challenge to Section 41.49. Allowing Fourth Amendment facial challenges (including this one) when they are nearly certain to fail makes no practical sense.

* * *

In light of the doctrinal incongruity between facial challenges and the Fourth Amendment touchstone of reasonableness, as well as the negligible practical utility of facial challenges in the Fourth Amendment arena, the Court may decide to forbid such challenges altogether. But it need not do so to resolve this dispute in Petitioner's favor. The Court need only recognize what the Ninth Circuit and Respondents freely acknowledge—*viz.*, at least one factual scenario exists under which Section 41.49 is constitutional. BIO 5. Respondents' concession that they cannot satisfy the high bar for prevailing on a facial challenge requires reversal of the judgment below.

II. Upholding The Ninth Circuit's Decision Would Threaten Numerous Similar Ordinances Across The Country And Thus Impair The Ability of States And Localities To Prevent And Combat Crime.

Under our system of dual sovereignty, the police power traditionally rests with state and local governments. This police power covers "protection of the lives, limbs, health, comfort, and quiet of all persons, and the protection of all property within the State." *Slaughter-House Cases*, 16 Wall. 36, 62 (1872) (quotation omitted). Its scope is wide, ranging from "the suppression of violent crime and vindication of its victims" to "eradicating automobile theft." *United States v. Morrison*, 529 U.S. 598, 618-19 (2000); *New York v. Burger*, 482 U.S. 691, 709 (1987). State and local governments thus retain broad authority to prevent crime and enforce their laws.

A city's regulation of hotels—which implicates the health, safety, and welfare of the general public—falls squarely within the police power. Indeed, hotels have

always faced "the triple threat of illicit sex, theft, and violence" and thus have used a variety of procedures and personnel to guard against such ills. A.K. Sandoval-Strausz, *Hotel: An American History* 221 (2007). For centuries, hotels and inns have required guests to sign a register when checking in, *see id.* at 237; *see also* Pet. Br. 4-5, and have recorded therein guests' names, room numbers, places of origin, and lengths of stay, *see* Sandoval-Strausz, *supra*, at 157. At least as early as the beginning of the twentieth century, many state and local governments began codifying this historical practice into law by requiring all hotels to maintain guest registers and make them available for inspection to law enforcement officers.

For example, in 1918, Massachusetts enacted a law requiring every hotel in the state to maintain "in permanent form, a register in which shall be recorded the true name or name in ordinary use and the residence of every person engaging or occupying a private room...." The Massachusetts statute also required hotels to retain records for at least one year and make the register "open to inspection of the licensing authorities, their agents and the police." Mass. St. 1918, c. 259, §§ 5, 8. Many other cities and states across the country did the same. *See, e.g.*, San Francisco, Cal. Police Code § 919 (Ord. 1071, Series of 1939, App. 12/3/57); Minneapolis, Minn. Code § 244.1260 (Code 1960); Denver, Colo. Code § 33-17 (Code 1950); Las Vegas, Nev. Code § 10.36.040.

States and localities today use hotel register and inspection laws to combat numerous types of crimes by making impossible the anonymity within which criminals prefer to operate. Some states and localities adopted these

ordinances for general crime prevention and other health and safety purposes. For example, San Antonio, Texas, adopted such a law in order to deter illegal activity and allow "emergency responders to properly identity sick, ill or injured persons and to allow for notification of next of kin in case of emergency or death." San Antonio, Tex. Code § 15-83 (as amended by Ord. No. 99517, July 29, 2004); *see also* Escondido, Cal. Code § 16D-15 (adopting the law because "record-keeping requirements will permit law enforcement to monitor and enforce the intended use of transient lodging facilities").[3]

Other state and local governments have targeted specific types of criminal activity. For example, Solana Beach, California, enacted a hotel register law in response to a teenage sex trafficking ring operating out of a local San Diego County hotel. *See* Bianca Kaplanek, *New Hotel Law to Aid Police Investigations*, The Coast News (June 21, 2013), https://thecoastnews.com/blog/2013/06/new-hotel-law-to-aid-police-investigations/. Solana Beach officials understood that during the San Diego County investigation, "deputies had difficulty getting information from hotels because there was no comprehensive, uniform record-keeping system and staff was uncertain about releasing the information." *Id.* In response to the San Diego County incident, the Solana Beach law requires hotel and motel operators to obtain various identifier information (e.g., the name and address of all registering guests, the names of anyone staying with them, the arrival date and time, and the assigned room number) and to make that information available to law enforcement officers on

3. *Law requires log of hotel-motel guests*, The Union Tribune (May 7, 2004), http://www.utsandiego.com/uniontrib/20040507/news_1mi7briefs.html.

request. Localities that have adopted similar laws have targeted a wide array of criminal activity. *See, e.g.*, Las Vegas, Nev. Code § 10.36.040 (prostitution); Arcadia, Cal., Code § 4231.6 (same); Salinas, Cal. Code § 21-350 (prostitution, gangs, and drugs);[4] West Milwaukee, Wis. Code § 14-506 (fugitives); Crete, Ill., Code § 12-456 (same); Granite City, Ill., Code § 5.100.060 (same).

It should be no surprise that hotel register and inspection laws are ubiquitous given their effectiveness in combatting a multitude of crimes and criminal activities. Petitioner references over 100 hotel register inspection ordinances from cities and localities across twenty-eight states. Pet. Br. 36, n.3. Yet this is but a fraction of the number of such ordinances across the country. California alone has at least seventy cities and localities with similar laws,[5] and *amici* have identified similar hotel register

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4. *See* City of Salinas, Staff Report, City Ordinance regarding Hotel Guest Registers (June 4, 2013), http://www.ci.salinas.ca.us/leadership/pdf/Reports/06042013%20CC1.pdf.

5. Alameda County, Cal. Code § 3.20.010; Antioch, Cal. Code § 5-7.02; Arcadia, Cal. Code § 4231.6; Azusa, Cal. Code § 18-998; Benicia, Cal. Code § 9.56.060; Camarillo, Cal. Code § 5.44.030 et seq.; Carson, Cal. Code § 41001; Chino, Cal. Code § 3.32.090; Chula Vista, Cal. Code § 3.41.060; Colton, Cal. Code § 5.08.010; Concord, Cal. Code § 5.70.020; Crescent City, Cal. Code § 3.20.090; Culver City, Cal. Code § 11.02.005; Delano, Cal. Code § 6.40.010, -.020; Downey, Cal. Code § 4130; Dublin, Cal. Code § 5.40.040; El Monte, Cal. Code § 5.48.020; Emeryville, Cal. Code § 5.25.01, -.02; Freemont, Cal. Code § 3-8200; Fremont, Cal. Code § 5.85.011, -.030; Fresno, Cal. Code § 9-105; Glendale, Cal. Code § 4.32.065; Fullerton, Cal. Code § 7.64.010; Gonzales, Cal. Code § 6.20.030; Greenfield, Cal. Code § 5.26.090; Huron, Cal. Code § 5.20.010, -.020; La Mesa, Cal. Code § 10.93.030; Lake Elsinore, Cal. Code § 5.84.010; Lancaster, Cal. Code § 5.20.020, -.040; La Puente, Cal. Code § 3.52.050; Livermore, Cal. Code § 9.20.010; Lomita, Cal. Code § 7-2.08; Long Beach, Cal.

inspection laws in fifteen additional states.[6] Upholding the decision below might result in the invalidation of all of these laws.

On top of that, it would call into question numerous similar record-keeping and inspection laws for other businesses. Mobile home parks are frequently subject to these ordinances. *See, e.g.*, Alameda, Cal. Code § 6-55.25;

Code § 5.48.010; Los Angeles County, Cal. Code § 8.20.020, -.050; Lynwood, Cal. Code § 3-31.2; Marin County, Cal. Code § 6.04.020, -.030; Maywood, Cal. Code § 5-11.01 *et seq.*; Modesto, Cal. Code § 4-7.302; Monrovia, Cal. Code § 9.48.070; National City, Cal. Code § 10.40.010 *et seq.*; Newport Beach, Cal. Code § 5.36.020; Oakland, Cal. Code § 5.34.030 *et seq.*; Oceanside, Cal. Code § 7.22; Placerville, Cal. Code § 5-9-5; Pleasant Hill, Cal. Code § 6.55.020; Palo Alto, Cal. Code § 9.28.010; Poway, Cal. Code § 9.30.030; Richmond, Cal. Code § 11.40.010; Rocklin, Cal. Code § 5.36.020, -.030; Rosemead, Cal. Code § 5.42.070 *et seq.*; Sacramento, Cal. Code § 5.76.020; San Buenaventura, Cal. Code § 10.550.010 *et seq.*; San Diego, Cal. Code § 52.9103; San Francisco Police Code 919; San Jose, Cal. Code § 6.38.010; San Marcos, Cal. Code § 5.74.040; San Ramon, Cal. Code § B7-290 *et seq.*; Santa Cruz, Cal. Code § 5.12.020; Seaside, Cal. Code § 5.48.030; Selma, Cal. Code § 5-14-5; Signal Hill, Cal. Code § 5.18.060; Simi Valley, Cal. Code § 5-11.01 *et seq.*; Solana Beach, Cal. Code § 4.49.040; South Gate, Cal. Code § 7.60.070; South Lake Tahoe, Cal. Code § 3.50.270; Thousand Oaks, Cal. Code § 5-9.06; South San Francisco, Cal. Code § 1470-2013; Tracy, Cal. Code § 4.12.010; Ventura County, Cal. Code § 6231 *et seq.*; Visalia, Cal. Code § 5.28.020; Walnut Creek, Cal. Code § 4-5.103.

6. Juneau, Alaska Code § 20.10.030; North Little Rock, Ark. Code § 66-6; New Haven, Conn. Code ¶ 401(*l*); Wilmington, Del. Code § 34-303; Florida Statutes § 509.101; Twin Falls, Idaho Code § 3-2-6; Lexington-Fayette County, Ky. Code § 14-22.1; Prince George's County, Md. Code § 5-168 *et seq.*; Bellevue, Neb. Code § 15-159; Truth or Consequences, N.M. Code § 254-96; White Plains, N.Y. Code § 9-9-3; Fargo, N.D. Code § 25-2201; Cincinnati, Ohio Code §§ 855-17, 855-21; Wilkes-Barre, Pa. Code § 24-1; Casper, Wyo. Code § 5.24.070.

Carlsbad, Cal. Code § 5.24.025; Martinez, Cal. Code § 18.60.040, Sanger Cal. Code § 74-21, Yreka, Cal. Code § 5.12.200, Alamosa, Colo. Code § 12-35, Buena Vista, Colo. Code § 16-150; Burlington, Colo. Code § 15.16.080, Craig, Colo. Code § 16.10.210. Similar record-keeping and inspection laws apply to second-hand dealers, including pawnshops and junkyards. For instance, California law requires uniform statewide reporting of property acquired by second-hand businesses to aid local law enforcement agencies and the state's Department of Justice in tracing and recovering stolen property. Cal. Bus. & Prof. Code § 21625 *et seq.*; *see also* Colo. Rev. Stat. § 12-56-103; Fla. Stat. §§ 538.03, 539.001; 205 Ill. Comp. Stat. 510/0.01 *et seq.*; Utah Code § 13-32a-101; Cripple Creek, Colo. Code § 6-4-150; Avon, Colo. Code § 5.28.130. Many states also require scrap metal dealers to keep records about their customers—in some cases, much more detailed records than hotel register ordinances require hotels to maintain for their guests—and make these available to the police for inspection. *See, e.g.*, Ohio Rev. Code § 4737.04(C); *see also Burger*, 482 U.S. at 709 (discussing N.Y. Veh. & Traf. Law § 415-a5).[7] In addition to second-hand dealers, service

7. Nearly every state in the Union has enacted a scrap metal purchase law. *See* National Conference of State Legislatures, *Metal Theft: 2013 Legislative Update* (Feb. 1, 2014), http://www.ncsl.org/ research/energy/metal-theft-2013-legislative update.aspx (stating that North Dakota recently "became the 49th state to enact a separate scrap metal purchase law"). These laws are in large part a response to rising metal theft that has resulted from rapidly increasing prices for scrap metal. *Id.* ("[C]opper's per pound value ranges from double to triple that of values in the early 2000s, motivating thieves to take greater risks when attempting to steal wiring and piping from utility property or electrical infrastructure. The U.S. Department of Energy estimates that metal theft and resulting power outages, revenue losses, and repairs costs businesses nearly $1 billion annually.").

providers, such as massage parlors, are subject to register and inspection laws. *See* Lafayette, Cal. Code § 4-510; Merced, Cal. Code § 5.44.340, -.360; Newark, Cal. Code § 5.24.150; Pacifica, Cal. Code § 5-19.21; Rohnert Park, Cal. Code § 9.80.240.

Invalidating all of these types of ordinances would severely undermine states' and municipalities' ability to fight crime and protect their residents. Indeed, cities that had been in the process of adopting hotel register laws have cancelled or suspended such plans in the wake of the decision below. *See* Jared Whitlock, *Court Overturns Hotel Registration Inspection Law*, The Coast News (Jan. 16, 2014) (reporting that Encinitas, California, decided to table a proposed inspection ordinance after the Ninth Circuit's decision). Worse, recent evidence demonstrates that the invalidation or suspension of hotel registry laws will lead directly to negative impacts on crime prevention and control. Indeed, Petitioner has reported an "82% increase in criminal activity at a sample of five motels between the six months before § 41.49's suspension and the six months after." Pet. Br. 39 (citing Pet. App. 120-33).

This underscores the need for reversal of the decision below. Upholding the Ninth Circuit's decision would threaten to negate all of the public safety benefits of laws like these when only a tiny fraction (at most) of such challenges would raise an identifiable Fourth Amendment concern.

CONCLUSION

Amici curiae respectfully request that the Court reverse the judgment below.

Respectfully submitted,

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CITY OF LOS ANGELES,

Petitioner,

v.

NARANJIBHAI PATEL, ET AL.,

Respondents.

On Writ of Certiorari to the
United States Court of Appeals
for the Ninth Circuit

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QUESTIONS PRESENTED

Amicus addresses only the following questions:

1. Whether the Government may compel the disclosure of business records required to be maintained by law without an opportunity for pre-compliance judicial review.

2. Whether the closely-regulated industry exception applies to business records containing third party personal information.

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INTEREST OF *AMICUS*[1]

The Rutherford Institute is an international nonprofit civil liberties organization headquartered in Charlottesville, Virginia. Founded in 1982 by its President, John W. Whitehead, the Institute provides *pro bono* legal representation to individuals whose civil liberties are threatened and educates the public about constitutional and human rights issues.

At every opportunity, The Rutherford Institute resists the erosion of fundamental civil liberties that many would ignore in a desire to increase the power and authority of law enforcement. The Institute believes that where such increased power is offered at the expense of civil liberties, it achieves a false sense of security while creating the greater dangers to society inherent in totalitarian regimes.

The Rutherford Institute is interested in this case because it is committed to ensuring the continued vitality of the Fourth Amendment. The ordinance at issue devolves nearly unbridled discretion on law enforcement to conduct on-site inspection of a hotel's guest records. It allows law

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[1] All parties to this matter have granted blanket consent for *amicus curiae* briefs in support of either or neither party. Petitioner filed such consent on November 17, 2014, and Respondents filed such consent on November 18, 2014. The requirements of Rule 37.2(a) of the rules of this court are satisfied by these filings. No counsel for a party authored this brief in whole or in part, and no party or counsel for a party made a monetary contribution intended to fund the preparation or submission of this brief. No one other than *amicus curiae*, its members, or its counsel made a monetary contribution to the preparation or submission of this brief.

enforcement to choose which hotels to target for inspection, when to target them, how frequently, and for what purpose—all without the opportunity for pre-compliance judicial review.

The ordinance thus poses a grave risk to the privacy rights of hotel owners, who are threatened with unwarranted and unpredictable visits and demands from the police under color of law. The ordinance also has far-reaching implications for the rights of hotel guests and customers who, stripped of their own privacy rights under the third party doctrine, must rely on the private business owner to safeguard their personal information. A decision reversing the Ninth Circuit would force otherwise unwilling business owners into the role of law enforcement, removing the last barrier between the Government and a customer's personal information.

SUMMARY OF THE ARGUMENT

The ordinance in question requires otherwise non-consenting hotel owners to submit to warrantless, on-site searches of their guest registries upon the demand of any Los Angeles police officer—at any time, of any frequency, for any duration, and for any reason—under threat of criminal sanction and without any opportunity for pre-compliance judicial review. This ordinance has no "plainly legitimate sweep." *Wash. State Grange v. Wash. State Rep. Party*, 552 U.S. 442, 449 (2008). Instead, it operates to circumvent the clear procedural safeguards this Court has recognized time and again as constitutionally required under the Fourth Amendment. That this ordinance amounts to

nothing but an end-run around these constitutionally-required procedures is demonstrated by the fact that a very narrow exception to such safeguards *already* exists—one for closely-regulated industries—and this case does not fit within it.

First, this Court has repeatedly reaffirmed the need to interpose a layer of judicial review between the Government and a business's private papers, in the form of an administrative subpoena or a warrant. *Okla. Press Publ'g Co. v. Walling*, 327 U.S. 186 (1946) (subpoena); *See v. City of Seattle*, 387 U.S. 541 (1967) (warrant). Such legal process is mandatory even where the records are required to be kept by law. *California Bankers Ass'n v. Shultz*, 416 U.S. 21, 54 (1974).

Second, third party information contained in business records cannot fall under the warrantless search exception for closely-regulated industries for one simple reason: even if an industry is closely regulated in some respects, customer or user information has historically never been the subject of such regulation. Rather, this Court has applied the closely-regulated industry exception only to cases involving the business owner's *own* compliance with the law; thus, this exception has been limited to searches of business inventory or workplace operations that raise unique issues of public concern. And this Court has recognized only four such unique instances: firearms, mines, liquor, junkyard vehicles.

Here, by contrast, the City would be tracing—not the "origin and destination of" potentially stolen vehicle parts, as in *New York v. Burger*—but the origin and destination of travelers passing through a

hotel. 482 U.S. 691, 709 (1987). But not only are the identities and comings-and-goings of hotel guests *not* traditionally closely regulated, to treat them as such would burden the fundamental rights of travel and association this Court has long safeguarded from arbitrary government scrutiny.

Finally, to the extent there may be slivers of constitutional applications left in light of the foregoing (though the City offers no viable hypotheticals, *see* Resp. Br. 48-50), leaving this law on the books risks confusing police and citizens alike and poses a serious threat to the constitutional rights of ordinary citizens. For all these reasons, this Court should affirm that this ordinance is unconstitutional.

ARGUMENT

I. GOVERNMENT ACCESS TO BUSINESS RECORDS—EVEN REQUIRED RECORDS—MUST COMPLY WITH "LEGAL PROCESS"

It is one thing for a law to require that businesses maintain certain records, but quite another for it to permit the Government full-fledged access to such records upon request. No decision of this Court has ever sanctioned the latter. To the contrary, this Court has previously emphasized that the Government must comply with "legal process" before it may gain access to records required to be maintained by law. *Shultz*, 416 U.S. at 52.

The defining characteristic of legal process is an opportunity for pre-compliance judicial review. In *Oklahoma Press*, this Court set forth the

requirements for an administrative subpoena for business records. The recipient of a subpoena, the Court stated, is "not required to submit to [it], if in any respect it is unreasonable," and he may contest the subpoena in court, "surrounded by every safeguard of judicial restraint." 327 U.S. at 217. In *See*, this Court adapted the *Oklahoma Press* standard governing administrative subpoenas in the context of on-site regulatory inspections on commercial premises—the scenario here. *See*, 387 U.S. at 544-45 (noting that the main characteristics of subpoenas are that they need to "be sufficiently limited in scope, relevant in purpose, and specific in directive and the subpoenaed party may obtain judicial review of the reasonableness of the demand prior to suffering penalties for refusing to comply"); *see also* Resp. Br. 26-29 (discussing § 41.49's failure to comply with the warrant requirement in *See*).

Shultz affirmed the importance of legal process in the required business records context. In *Shultz*, the Court distinguished between two different records requirements found in the Bank Secrecy Act. The Court upheld the portion of the Act requiring banks to self-report to the Government particularly large bank transactions exceeding $10,000 (Title II). 416 U.S. at 66-67. As to the portion of the Act requiring that the bank maintain a comprehensive set of records as to *all* transactions in *all* customer accounts (Title I), however, the Court upheld the records maintenance requirement only after emphasizing repeatedly that "access to the records is to be controlled by existing legal process." *Id.* at 52; *see also id.* at 27, 34-35, 49, 54. In other words, the Court found the required maintenance of comprehensive bank records constitutional in part

because the Government did not also have *carte blanche* to access them.

The Court reaffirmed the legal process requirement two years later in *United States v. Miller*, also in the bank records context. 425 U.S. 435, 446 (1976) ("[I]n *California Bankers* we emphasized that access to the [required bank] records was to be in accordance with 'existing legal process."). The Court further made clear that by "existing legal process," it was referring specifically to the standard set forth in *Oklahoma Press*. *See Miller*, 425 U.S. at 445-46. While holding that a bank *customer* could not challenge a subpoena for their bank records (having turned those records over to the bank), the Court recognized that the *bank* could contest its validity. *Id.* at 446 n.9. So here, law enforcement must seek the hotel guest registry through legal process, and the hotel must be afforded an opportunity to contest its validity—even if, under *Miller*, the guests themselves cannot.

Shultz, together with *Miller*, thus stands not only for the proposition that the Government may require the maintenance of certain business records, but also the corollary that the Government may not then compel their disclosure without a subpoena or warrant. Accordingly, the City misses the point entirely when it counters that the requirement for pre-compliance judicial review found in "the context of administrative subpoenas" is irrelevant because "§ 41.49 does not authorize administrative subpoenas." Petr. Br. 41. Indeed, it is *precisely* the ordinance's attempt to dispense with the subpoena requirement entirely—with no substitute form of legal process—that renders it unconstitutional.

II. "LEGAL PROCESS" CURBS ARBITRARY INVASIONS OF PRIVACY AND INDISCRIMINATE RUMMAGING

The City attempts to analogize the ordinance to the regulatory self-reporting requirement in *Shultz*. *See* Petr. Br. 53; *see also id.* at 19 (second hypothetical). But this comparison misses the key distinctions between the two different types of business record requirements. And it highlights the important purposes legal process serves.

First, in the case of self-reporting, the uniformity of the reporting requirement satisfies the Fourth Amendment concern regarding the potential for arbitrary invasions of privacy. *See Brock v. Emerson Elec. Co.*, 834 F.2d 994, 996 n.2 (11th Cir. 1987). By contrast, nothing about the instant ordinance ensures uniform enforcement. Far from it—the ordinance devolves unbridled discretion on law enforcement to enforce it however they choose.

The sole "guidance" provided by Section 41.49 is that "[w]henever possible," the police shall conduct the inspection so as to "minimize[] any interference with the operation of the business." LAMC § 41.49(3)(a). Section 41.49 otherwise leaves "the frequency and purpose of inspections to the unchecked discretion of Government officers," *Donovan v. Dewey*, 452 U.S. 594, 604 (1981), and a hotel owner is "left to wonder about the purposes of the inspector or the limits of his task." *United States v. Biswell*, 406 U.S. 311, 316 (1972). Smaller mom-and-pop motels, for instance, may be targeted more frequently than larger hotel chains. Nothing in the ordinance provides criteria

for selecting hotels for inspection. And nothing in the ordinance limits the number of times law enforcement may visit a hotel in the same month, week, or even day.

Second, regulatory self-reporting limits the potential for indiscriminate rummaging through a compendium of business records, because the information required to be reported is clearly defined and must be sufficiently related to some reasonable legislative objective. *Coolidge v. New Hampshire*, 403 U.S. 443, 467 (1971) (plurality) (Fourth Amendment seeks to safeguard against "exploratory rummaging in [that] person's belongings"). In *Shultz*, for instance, the Court found that the compulsory self-reporting of bank transactions exceeding $10,000 was "sufficiently related to a tenable congressional determination as to improper use of transactions of that type in interstate commerce." 416 U.S. at 67. In other words, the scope of information to be reported was *already* tailored to a subset of transactions giving rise to a reasonable concern of illegality.

By contrast, such tailoring is entirely lacking where a business is required by law to maintain comprehensive records of *all* customers, as here—and then to simply turn them over upon request. In these circumstances, subpoenas and warrants are necessary to limit the discretion accorded to law enforcement by: (a) requiring them to articulate a legitimate purpose for the search on a particular occasion, (b) tailoring the scope of disclosure to that purpose to avoid general "rummaging" through the records, and (c) affording the subject of the search a chance to contest the reasonableness of the demand

in court before it may be subject to criminal penalties for failing to comply.

The complete absence of these procedural protections from Section 41.49 renders it unconstitutional in all of its applications.

III. THE CLOSELY-REGULATED INDUSTRY EXCEPTION DOES NOT APPLY HERE

Petitioner also argues that the ordinance is valid because it falls within the closely-regulated industry exception. This exception is one of a very small handful of "special need" scenarios this Court has recognized, intended to accommodate unique, non-law-enforcement-driven scenarios in which the warrant requirement is impracticable. *See Griffin v. Wisconsin*, 483 U.S. 868 (1987) (collecting cases). The closely-regulated industry exception reasons that "[c]ertain industries have such a history of government oversight that no reasonable expectation of privacy could exist for a proprietor *over the stock of* such an enterprise." *Marshall v. Barlow's, Inc.*, 436 U.S. 307, 313 (1978) (emphasis added). But this exception does not apply here, where business records containing third party information is sought.

A. THIS NARROW EXCEPTION APPLIES ONLY TO GOODS AND WORKPLACE OPERATIONS

The closely-regulated industry exception has only ever been upheld in the context of inspections of business goods and operations posing special risks of danger or illegality. And it should remain that way: the warrantless exception does not make sense if

extended to business records, and particularly those containing third party private information. *Cf. Burger*, 482 U.S. at 694-95 (required "police book" contained records of automobile inventory). If permitted, then this exception—originally intended as "responses to relatively unique circumstances" (*Marshall*, 436 U.S. at 313)—would completely swallow the general rule requiring legal process.

This Court has only upheld the closely-regulated industry exception on four occasions: *Colonnade Catering Corp. v. United States*, 397 U.S. 72 (1970) (liquor), *Biswell*, 406 U.S. 311 (firearms), *Donovan*, 452 U.S. 594 (mines), and *Burger*, 482 U.S. 691 (junkyard vehicles and parts). Significantly, these cases all relate to whether the owner of the business is *himself* operating in compliance with the regulatory scheme governing his chosen profession—and in particular, whether the goods he traffics in or high-risk workplaces he operates are in compliance with the law. It is the *goods* and the *workplace operations* that are pervasively regulated, because of the special risks they pose.

Only then does the proffered justification for the exception make sense: businessmen that engage in enterprises of this nature "accept the burdens as well as the benefits of their trade" and "in effect consents to the restrictions placed upon him." *Almeida-Sanchez v. United States*, 413 U.S. 266, 271 (1973). A businessman who chooses to deal in a more heavily-regulated type of goods or workplace can expect to receive heightened government scrutiny to ensure that his *own* actions and dealings are legitimate.

But the businessman who renders services to or opens his doors to the public cannot expect to be compelled to open his customer records to the Government under the above rationale. Records containing personal information on customers generally have *no* bearing on whether the owner is operating his business in compliance with the law. Indeed, most third party institutions who come across and hold such private information—Internet service providers, restaurants, hotels, hospitals, telecommunications companies, banks, and credit companies, to name a few—cannot be held liable for the actions of their customers absent misconduct of their own. And these same types of businesses, in being entrusted with such personal information, have an interest—and oftentimes legal duty—in maintaining the privacy of their customers.

Were the hotel industry considered to be closely-regulated for the purposes of the exception, there would be no logical stopping point. Most businesses that serve the public are, like hotels, closely-regulated in many respects to protect the public. These regulations range from laws setting health and safety standards (*e.g.*, building codes, food preparation codes) to laws ensuring the equal treatment of customers (*e.g.*, non-discrimination laws, disability accommodation laws) to general consumer protection laws ensuring customers are treated fairly (*e.g.*, regulations governing marketing, pricing or rates). *See* Petr. Br. 33 (listing hotel regulations that primarily fall into these categories). It would be perverse indeed if these same regulations, intended to protect the public, operated instead to strip them of any privacy they have left.

Thus, a restaurant may be subject to surprise inspections from health inspectors—but may it also be compelled to turn over its reservation lists for the next three months? Cab companies are subject to strict licensing requirements—but may those same regulations empower police to demand warrantless inspections of passenger records? The closely-regulated industry exception simply cannot extend to information that bears no nexus to whether the business owner is himself operating in compliance with the regulatory scheme in question. Such a result would eviscerate the Fourth Amendment.

B. THE IDENTITIES AND COMINGS-AND-GOINGS OF HOTEL GUESTS HISTORICALLY HAVE NOT BEEN CLOSELY REGULATED

For the reasons discussed above, the Court should adopt a categorical rule that business records containing third party information cannot fall into the closely-regulated industry warrantless search exception. If this Court declines to adopt such a rule, then it should find that the exception does not apply to hotel guest registries.

Not only have the identities and comings-and-goings of hotel guests *not* been subject to "a long tradition of close government supervision," *Burger*, 482 U.S. at 700, but to treat them as closely regulated for the purposes of this exception would, in fact, burden two long-recognized fundamental rights: the right to travel and freedom of association.

Right To Travel. This Court has long recognized the "right to travel freely from State to State." *United States v. Guest*, 383 U.S. 745, 760

n.17 (1966); *id.* at 757 ("The constitutional right to travel from one State to another, and necessarily to use the highways and other instrumentalities of interstate commerce in doing so, occupies a position fundamental to the concept of our Federal Union.") (citing *Crandall v. Nevada*, 73 U.S. 35 (1868)); *Dunn v. Blumstein*, 405 U.S. 330 (1972) ("[F]reedom to travel throughout the U.S. has long been recognized as a basic right under the Constitution.").

This right to travel must be free of unreasonable regulatory burdens, including unreasonable government scrutiny. *Shapiro v. Thompson*, 394 U.S. 618 (1969) ("This Court long ago recognized that the nature of our Federal Union and our constitutional concepts of personal liberty unite to require that all citizens be free to travel throughout the length and breadth of our land *uninhibited by statutes, rules, or regulations which unreasonably burden or restrict this movement.*") (emphasis added). Thus, in *Carroll v. United States*, 267 U.S. 132, 153-54 (1925), this Court distinguished between foreign and domestic travel, noting that "those lawfully within the country, entitled to use the public highways, have a right to free passage without interruption or search" in the absence of probable cause. Similarly, this Court has consistently invalidated vagrancy laws that require people on the streets to identify themselves absent reasonable suspicion. *See Brown v. Texas*, 443 U.S. 47 (1979); *Kolender v. Lawson*, 461 U.S. 352 (1983); *City of Chicago v. Morales*, 527 U.S. 41 (1999).

The emphasis on freedom of movement evolved hand-in-hand with American democracy. A.K. SANDOVAL-STRAUSZ, HOTEL: AN AMERICAN

HISTORY 141 (2007) (discussing the "material and ideological changes of the late eighteenth and early nineteenth century" and "gradual collapse of locally enforced restrictions on movement").[2] By 1798, one noted European traveler observed of his time in the United States that, unlike in Europe, "[t]here are no eagles, nor customs, nor sentries, nor do they stop nor ask who one is, when once came, and for what purpose." *Id.* Hotels have long played a role in facilitating this freedom of movement. *See generally* SANDOVAL-STRAUSZ; *see also Heart of Atlanta Motel, Inc. v. United States*, 379 U.S. 241, 258 (1964). In facilitating this movement, hotel owners have an interest, if not duty, in respecting the privacy of their guests, in the same way they are bound to offer hospitality, and room and board to all travelers. *See also Stoner v. California*, 376 U.S. 483 (1964) (hotel clerk may not consent to a search of guest's room).

Freedom of Association. Similarly, one's travel companions or fellow attendees at a political convention held in a hotel have also never been subject to arbitrary government scrutiny. This Court has long recognized the "vital relationship between freedom to associate and privacy in one's associations." *NAACP v. Alabama ex rel. Patterson*, 357 U.S. 449, 462 (1958). In *NAACP*, this Court held that the disclosure of membership lists of a

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[2] The idea that individuals possessed a natural right to move from place to place emerged in eighteenth century Europe during the Enlightenment period. *Id.* at 140. In 1789, the Estates General asserted that "every sojourner in this life must be free to move about or come, within and outside the Kingdom, without permissions, passports, or other formalities that tend to hamper the liberty of its citizens." *Id.*

constitutionally valid association was invalid "as entailing the likelihood of a substantial restraint upon the exercise by petitioner's members of their right to freedom of association." *Id.*

Hotel guest registries can reveal much about a person's associations. Hotels and motels are the sites of political conventions, base camps for protestors, and countless of other types of group bookings. *See* SANDOVAL-STRAUSZ 258-260 (tracing the role of the hotel in the growth of regional and national associations—political, religious, and social). Indeed, the guest list from a political convention held at a hotel the previous weekend could very well constitute a membership list.

This case is thus strikingly different from the other "special needs" searches that this Court has recognized as requiring a less demanding Fourth Amendment standard. These have included searches involving: government employees' desks and offices (*O'Connor v. Ortega*, 480 U.S. 709 (1987)), student lockers in schools (*New Jersey v. T.L.O.*, 469 U.S. 325 (1985)), probationer's houses (*Griffin v. Wisconsin*, 483 U.S. 868 (1987), blood and urine tests for railway workers (*Skinner v. Rwy. Labor Execs. Ass'n*, 489 U.S. 602 (1989)), urinalysis for U.S. Customs applicants who would be dealing with firearms and drugs (*National Treasury Employees Union v. Von Raab*, 489 U.S. 656 (1989)), and random drug tests for students (*Vernonia School District 47J v. Acton*, 515 U.S. 646 (1995).

Searches of hotel guest registries, on the other hand, implicate intimate details of travel and one's travel companions—areas this Court has

traditionally protected *against* government scrutiny. Because the affairs of travelers have not historically been closely regulated, in large part owing to the above constitutional considerations, the closely-regulated industry exception does not apply here.

CONCLUSION

For the foregoing reasons, this Court should affirm that this ordinance is unconstitutional.

Respectfully submitted,

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AMICUS CURIAE BRIEF

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CITY OF LOS ANGELES,

Petitioner,

v.

NARANJIBHAI PATEL, ET AL.,

Respondents.

On Writ of Certiorari to the
United States Court of Appeals
for the Ninth Circuit

BRIEF OF THE UNITED STATES CHAMBER OF COMMERCE AS *AMICUS CURIAE* IN SUPPORT OF RESPONDENTS

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INTEREST OF *AMICUS CURIAE*[1]

The United States Chamber of Commerce (the "Chamber") is the world's largest business federation. It represents 300,000 direct members and indirectly represents the interests of more than three million companies and professional organizations of every size, in every industry sector, from every region of the country. The Chamber advocates its members' interests before Congress, the Executive Branch, and the courts, and regularly files *amicus* briefs in cases raising issues of concern to the Nation's business community.

The issues presented in this case, which concern the protection afforded under the Fourth Amendment to business records, could have profound implications for the Chamber's members. Virtually all of the Chamber's members—including numerous participants in the hospitality industry—create and maintain records that include data regarding their customers. The Chamber's members have a strong interest in a resolution of this case that recognizes that such records are "papers" that receive the full protection of the Fourth Amendment, and that rejects the City's

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[1] Pursuant to Rule 37.6, *amicus curiae* states that no counsel for a party authored this brief in whole or in part, and no person other than *amicus*, its members, and its counsel, made any monetary contribution intended to fund the preparation or submission of this brief. Both parties have filed blanket letters of consent to the filing of *amicus* briefs with the Clerk's office.

expansive approach to the "pervasively regulated" business exception.

SUMMARY OF ARGUMENT

Like Respondents here, virtually every business, small or large, invests in creating and maintaining records that track the identities and contact information of, and the services and rates provided to, its customers. Furthermore, virtually every business, small or large, is subject to various statutes, regulations, and ordinances, some of which are specific to the business's particular industry and others of which are generally applicable to all businesses. Under Petitioner's understanding of the Fourth Amendment, the government could impose an unfettered inspection regime, free of any judicial check, on any of those businesses and their records.

The Court's resolution of this case should be informed by its longstanding recognition that business records, including the hotel guest records at issue in this case, are "papers" protected by the Fourth Amendment. Under *United States v. Jones*, 132 S. Ct. 945 (2012), the compelled inspection of a business's records *always* constitutes a search of property under the Fourth Amendment, which must either be justified by a warrant or subject to one of the limited exceptions to the warrant requirement. Because business records are undeniably property protected by the Fourth Amendment, the Court need not even inquire as to whether a business has a reasonable expectation of privacy in its customer records. However, should the Court reach that question, it is clear that businesses

have such an expectation given the investment they make in customer records. That is particularly the case with respect to the hospitality industry.

The City essentially concedes that its ordinance constitutes a search under the Fourth Amendment, but defends it by invoking an exception to the warrant requirement for "pervasively regulated" businesses. That exception has no applicability here. It can be justified only where the pertinent industry has "such a history of government oversight" and there exists a regulatory scheme that is "sufficiently comprehensive and defined that the owner of commercial property cannot help but be aware that his property will be subject to periodic inspections undertaken for specific purposes.'" *New York v. Burger*, 482 U.S. 691, 700, 703 (1987). That is not the case here. The City and its *amici* have cobbled together a hodgepodge of unrelated, generally applicable statutes and ordinances that apply to hotels in an effort to show that the industry is comprehensively regulated. Their effort actually demonstrates the opposite. Indeed, if the regulations at issue here are enough to make the hotel industry "pervasively regulated," then there is essentially no business that would *not* be deemed "pervasively regulated."

Even if the hotel industry were pervasively regulated, the City's inspection program still would be unconstitutional. The City's asserted purpose for intruding on these businesses is one of general information gathering about third parties to deter crime. It does not serve the purpose of ensuring that the businesses themselves are complying with the

purported regulatory scheme. The Fourth Amendment does not tolerate the compelled inspection of a business's records, devoid of any judicial check, for the sole purpose of gathering information and deterring the conduct of others over whom the business lacks any control.

ARGUMENT

I. The Compelled Inspection Of Business Records Is Always A Search.

This case goes to the heart of what the Fourth Amendment protects: the "right of the people to be secure in their persons, houses, papers, and effects, against unreasonable searches and seizures." U.S. Const. amend. IV. Where, as here, the government compels the inspection of "papers" that are the property of a business, "a 'search' within the original meaning of the Fourth Amendment" has "undoubtedly occurred." *Jones*, 132 S. Ct. at 950-51 n.3. To be sure, this Court has held that property rights "are not the sole measure of Fourth Amendment violations," *Soldal v. Cook County*, 506 U.S. 56, 64 (1992), and the Fourth Amendment likewise protects a reasonable expectation of privacy, *Katz v. United States*, 389 U.S. 347, 353-54 (1967). But where the government compels a business to turn over its "papers," that should be the end of the inquiry as to whether there has been a search under the Fourth Amendment, without even reaching the question of whether a business has a "reasonable expectation of privacy" in those papers.

Certainly, businesses, which invest heavily in customer data, do have a reasonable expectation of privacy in their records—particularly businesses in the hospitality industry at issue here. But while this reasonable expectation of privacy "may add to the baseline, it does not subtract anything from the Amendment's protections," *Florida v. Jardines*, 133 S. Ct. 1409, 1414 (2013), which on their face prohibit the compelled inspection of the "papers" belonging to a business.

A. Business Records Have Always Been Considered Property Subject To The Fourth Amendment's Warrant Requirement.

This Court has long recognized that the "businessman, like the occupant of a residence, has a constitutional right to go about his business free from unreasonable official entries upon his private commercial property." *See v. City of Seattle*, 387 U.S. 541, 543 (1967). There can be no doubt that among a business's most fundamental property interests is the right the business has over the papers it creates in the course of its operation. As was observed two-and-a-half centuries ago in *Entick v. Carrington*, 19 How. St. Tr. 1029 (1765)—a case "'undoubtedly familiar' to 'every American statesman' at the time the Constitution was adopted, and considered to be 'the true and ultimate expression of constitutional law' with regard to search and seizure," *Jones*, 132 S. Ct. at 949 (citation omitted):

> Papers are the owner's goods and chattels; they are his dearest property, and are so far from enduring a seizure, that they will hardly bear an inspection; and

> though the eye cannot by the laws of England be guilty of a trespass, yet where private papers are removed and erried away the secret nature of those goods will be an aggravation of the trespass, and demand more considerable damages in that respect.

Entick, 19 How. St. Tr. at 1066, *quoted in Boyd v. United States*, 116 U.S. 616, 627-28 (1886).

Business records undeniably are embraced by the protection that the Fourth Amendment affords to "papers." *See Boyd*, 116 U.S. at 622 (subpoenaed invoices were tantamount to "compulsory production of a man's private papers" and "property [that] is within the scope of the fourth amendment"); *Hale v. Henkel*, 201 U.S. 43, 76-77 (1906) (recognizing that the "books and papers" of a corporation are its "property," to which the Fourth Amendment applies); *Silverthorne Lumber Co. v. United States*, 251 U.S. 385, 391 (1920) (treating business records seized as "papers"); *Go-Bart Importing Co. v. United States*, 282 U.S. 344, 349-50 (1931) (referring to business's "papers, journals, account books, letter files, insurance policies, cancelled checks, index cards, and other things belonging" to it as "papers"); *Fisher v. United States*, 425 U.S. 391, 406 (1976); *Andresen v. Maryland*, 427 U.S. 463, 471, 478 (1976).

A business's right over its own records would have "little practical value" if those records could be forced from its hands at the government's calling. *Jardines*, 133 S. Ct. at 1414. It thus should be of little surprise that all twelve of the Ninth Circuit judges who reached the merits of Respondents' Fourth Amendment claim found it uncontroversial that such records must be

afforded protection as "papers." *See* Pet. App. at 6 ("The 'papers' protected by the Fourth Amendment include business records like those at issue here."); Pet. App. at 26 (Clifton, J., dissenting) ("The Fourth Amendment applies to the intrusion here, based on what the majority opinion has termed the property-based rationale. That is true whether or not hotels have a reasonable expectation of privacy in guest registers."); Pet. App. at 43 ("The guest register covered by the city ordinance is a protected paper."); Pet. App. at 47 (Pregerson, J., dissenting).

The district court was wrong to suggest otherwise. It reasoned, prior to this Court's decision in *Jones*, that hotels do not have "an ownership or possessory interest" in their guest registry because they "must create and maintain these registers in order to comply with the ordinance at issue" and are not "prevented from maintaining a separate set of documents containing the same or similar information in another location not subject to inspection." Pet. App. at 56. The district court got the analysis exactly backwards. The question is not whether businesses are free to make copies of records prepared for the government, but whether the government can compel the inspection of records that those businesses have themselves created and maintained.

The compelled inspection of business records thus will always be a search, without any need to inquire as to whether the business has a reasonable expectation of privacy in such records. And that search is per se unreasonable absent a warrant or an applicable exception to the warrant requirement. *G.M. Leasing*

Corp. v. United States, 429 U.S. 338, 352-53 (1977) ("'[O]ne governing principle, justified by history and by current experience, has consistently been followed: except in certain carefully defined classes of cases, a search of private property without proper consent is 'unreasonable' unless it has been authorized by a valid search warrant.'" (quoting *Camara v. Municipal Court*, 387 U.S. 523, 528-529 (1967)) (bracket in original)); *Marshall v. Barlow's, Inc.*, 436 U.S. 307, 312-13 (1978) (where "the government intrudes on a person's property," a warrant is required "unless some recognized exception to the warrant requirement applies").

B. Businesses Have A Reasonable Expectation Of Privacy In Their Records.

Though it is not necessary to reach the inquiry given that the compelled inspection of "papers" belonging to a business is encompassed by the plain text of the Fourth Amendment, a business also has a significant proprietary interest in its customer records which gives rise to a reasonable expectation of privacy. *See Jardines*, 133 S. Ct. at 1419 (Kagan, J., concurring) (observing that it is not surprising that there would be both a property interest and a reasonable expectation of privacy because "the law of property 'naturally enough influence[s]' our 'shared social expectations' of what places should be free from governmental incursions" (bracket in original)).

Most businesses, large or small, invest in the creation and maintenance of the sort of records at issue in this case, which document the identity and contact information of, and the services and rates provided to,

their customers. *See* L.A. Mun. Code § 41.49.2(a)(1). Such records are at the core of a business's livelihood. Not only do they detail the specific persons and sources from which the business earns its revenue, but they can reflect the health of the business, previous strategies undertaken by the business, as well as the business's opportunities for future growth. These records are thus typically some of a business's most valuable, closely guarded, and private property.

This is particularly true with respect to the hospitality industry, in which the value of a particular hotel chain is premised in large part on customer loyalty. Hotels invest millions of dollars each year curating and cultivating records of actual and potential customers to cater to their expectations and direct marketing to their attention. *See* Iselin Skogland & Judy A. Siguaw, *Are Your Satisfied Customers Loyal?*, *in The Cornell School of Hotel Administration Handbook of Applied Hospitality* 331 (Cathy A. Enz ed. 2010). Furthermore, hotels, including independent hotels and motels, routinely compete with one another by providing consideration to customers, through rewards and other loyalty programs, to obtain customer information and win customer loyalty. *Id.*; *see also* Clay M. Voorhees, et al., *Assessing the Benefits of Rewards Programs*, 14-1 Cornell Hospitality Report no. 1, Jan. 2014, at 4, 11 (finding that independent hotels experienced approximately 50% growth in revenue through loyalty programs).

Businesses also have a proprietary interest in customer records in their aggregate. Businesses invest substantial resources in analyzing customer data to

understand opportunities for growth, to make business-planning decisions, and to ensure the optimal allocation of their resources. And, more so than ever in the age of BigData, individual and aggregate information regarding customer demographics and spending patterns has independent value to third party firms who pay large sums for such data to conduct their own market analyses.

Understandably, businesses reasonably expect to keep the proprietary information in which they have significantly invested private. Thus, although this case can be easily disposed of under a "property rubric," the Court "could just as happily .. decide[] it by looking to . privacy interests." *See Jardines*, 133 S. Ct. at 1418 (Kagan, J., concurring). The sentiment that the right of a business to be free of search and seizure of its papers "while originating in property law, now also denotes a common understanding... about an especially private sphere." *Id.* at 1419. Businesses invest so heavily in their customer records because it is widely and reasonably understood that these records are not just their property, but their private property.

II. The City's Expansive Approach To The Exception For "Pervasively Regulated" Businesses Is Untenable.

The City's petition for certiorari asked this Court to address a purported split between the Ninth Circuit's decision below and the Massachusetts Supreme Court's decision in *Commonwealth v. Blinn*, 503 N.E.2d 25 (Mass. 1987), with respect to whether a hotel has any Fourth Amendment interest in its guest register and thus whether the compelled inspection of hotel guest

records constitutes a search. Pet. at 25-26. In its merits briefing, however, it appears that the City has abandoned that argument. Instead, the City contends that, while the inspection of hotel guest records is a search, such a search is permitted under the "pervasively regulated" exception to the warrant requirement. Pet. Br. at 29-36. But that limited exception applies only where a business is subject to a regulatory scheme that is "'sufficiently comprehensive and defined that the owner of commercial property cannot help but be aware that his property will be subject to periodic inspections undertaken for specific purposes.'" *Burger*, 482 U.S. at 702-03 (citations omitted). Though the City and its *amici* have collected a series of generally applicable statutes to create the guise of a comprehensive scheme regulating the hotel industry, their effort actually demonstrates that no such scheme exists. Indeed, the City's understanding of the "pervasively regulated" exception is the very definition of the exception swallowing the rule. If the City is correct that the regulations it cites suffice to make the hotel industry "pervasively regulated," then it is difficult to imagine any business that would not be "pervasively regulated."

Moreover, even if the hotel industry *were* subject to pervasive regulation, the City's warrantless inspections would be permitted only if, in addition to providing constitutionally adequate protections, the City had "a 'substantial' government interest that informs the regulatory scheme pursuant to which the inspection is made" and its warrantless inspection is "'necessary to further [the] regulatory scheme.'" *Burger*, 482 U.S. at

702-03 (citations omitted) (bracket in original). No such interest is present here.

A. Under The City's Approach, Virtually Every Business Would Be "Pervasively Regulated."

The exception allowing inspection of "pervasively regulated" businesses without judicial review is premised on the idea that some businesses "have such a history of government oversight that no reasonable expectation of privacy could exist" and that such businesses have "in effect consent[ed] to" government inspection of their commercial property without any judicial check. *Barlow's*, 426 U.S. at 313 (internal quotation marks omitted) (citation omitted). But if the Fourth Amendment's protections are to have meaning in anything "but the most fictional sense," this exception must be strictly limited in scope. *Id.* at 314. This simply reflects the fact that businesses are not swift to forfeit their constitutional rights to their property and privacy. *See id.* at 313 (recognizing that the exception applies in "relatively unique circumstances" and with respect to "certain carefully defined" industries (internal quotation marks omitted)); *Burger*, 482 F.3d at 700-01 (recognizing the "narrow focus" of the doctrine to address a "unique" problem). This Court has accordingly applied this limited exception on only four occasions. *See Colonnade Catering Corp. v. United States*, 397 U.S. 72 (1970) (liquor industry); *United States v. Biswell*, 406 U.S. 311 (1972) (firearm sales); *Donovan v. Dewey*, 452 U.S. 594 (1981) (mining); *Burger*, 482 U.S. 691 (automobile junkyard).

The district court and Ninth Circuit were correct to observe that the hotel industry is not even close to being pervasively regulated. *See* Pet. App. at 13 n.2 ("no serious argument can be made that the hotel industry has been subjected to the kind of pervasive regulation" required to part with the warrant requirement); Pet. App. at 54 (there is "no evidence that hotels or motels in California or Los Angeles have been subjected to the same kind of pervasive and regular regulations as other recognized 'closely regulated' businesses"). In arguing otherwise, the City and its *amici* cobble together a number of discrete state and municipal statutes and ordinances into a comprehensive regulatory scheme. *See* Pet. Br. at 33-34; Br. of California, et al. as *Amici Curiae* in Support of Petitioner at 9-11 (hereinafter "States' Br."). In fact, however, their effort proves exactly the opposite.

According to the City and its *amici*, the following regulations demonstrate that hotels are so pervasively regulated that they have, in effect, consented in advance and without any pre-compliance review to the government's search of their property:

- California's general discrimination law, which applies to "all business establishments of every kind whatsoever." Cal Civ. Code § 51(b). *See* States' Br. at 10.
- A California criminal statute that prohibits all common carriers from refusing service without just cause. Cal. Penal Code § 365. *See* Pet. Br. at 33; States' Br. at 10.

- The Department of Health Services' sanitization requirements, which govern all "public places." Cal. Code Regs. tit. 17, §§ 30852-30858. *See* Pet. Br. at 34 (Cal. Code Regs. tit. 17, § 30852 et seq.); States' Br. at 10 (citing Cal. Code Regs. tit. 17, §§ 30852-30858).[2]

- A municipal ordinance requiring that hotels, like churches, day care facilities, hospitals, and theaters, obtain an operational permit from the Fire Marshall. L.A. Mun. Code §§ 57.105.6.1-.31. *See* Pet. Br. at 32.

- A municipal ordinance imposing various water conservation obligations on "any customer of the Department [of Water and Power]," L.A. Mun. Code § 121.09(B), and various specific businesses, *id.* § 121.08(A)(3), which contains a single sub-sub-section requiring hotels and motels to "provide guests with the option of choosing not to have towels and linens laundered daily." *Id.* § 121.08(A)(12). *See* Pet. Br. at 33.

- California's consumer protection law, which prohibits false advertising by "any person, firm, corporation or association" and, in addition to regulating the advertisement of hotel and motel rates, *see* States' Br. at 9 (citing Cal. Bus. & Prof. Code §§ 17560-17568.5), regulates

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[2] Though the regulations themselves do not define "public place," the California legislature has elsewhere defined the term to include any "area open to the public" or "building open to the general public." Cal. Penal Code § 653.20.

everything from individual travel agents, Cal. Bus. & Prof. Code §§ 17550, *et seq.*, to vending machine operators, *id.* §§ 17570, *et seq.*[3]

- Fire safety laws that also govern all "privately owned highrise structures" and "apartment houses two stories or more in height that contain three or more dwelling units." Cal. Health & Safety Code § 13220; *see also id.* § 13006.5 (applicable to "any apartment house" or "roominghouse"); *id.* § 13113.7 (applicable to "all dwelling units intended for human occupancy," including any condominium); *id.* § 17920.8 (applicable to all "apartment houses"). *See* States' Br. at 10 (relying on each of these provisions).

These discrete, generally applicable laws do not resemble a "comprehensive and defined" statutory scheme from which a hotel owner or manager "cannot help but be aware that his property will be subject to periodic inspections undertaken for specific purposes." *Burger*, 482 U.S. at 705 n.16 (quoting *Dewey*, 452 U.S. at 600); *cf. Barlow's*, 436 U.S. at 314 ("It is quite unconvincing to argue that the imposition of minimum wages and maximum hours on employers prepared

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[3] The other false advertising provision cited by the City's *amici*, Cal. Bus. & Prof. Code § 17538.8, does not appear to be particularly relevant to hotels at all, but requires travel agents or others advertising packages of transportation and discounted accommodations, or accommodations and discounted travel, to disclose the total price to be paid by the customer. *See* States' Br. at 9.

the entirety of American interstate commerce for regulation of working conditions to the minutest detail.").

Nor is this case remotely comparable to the circumstances in which this Court has previously found businesses to be "pervasively regulated." The City does not (nor could it) make any attempt to compare the regulation of hotels to the liquor, firearm, or mining industries at issue in *Colonnade*, *Biswell*, and *Dewey*. Instead, the City focuses its energy on *Burger*, in which this Court applied the "pervasively regulated" exception to the vehicle dismantling industry in New York. Pet. Br. at 31-36. The statutory scheme in *Burger*, however, was not premised on a patchwork of discrete, generally applicable laws. Rather, *Burger* involved a unique circumstance in which New York had passed an "extensive" and unified framework of regulations specifically directed to the "activity of vehicle dismantling." 482 U.S. at 704. Those regulations included a strict licensing scheme, *id.* at 704-05 & n.15, and addressed virtually every participant in the dismantling and salvaging industry, *id.* at 705 & n.16.[4] The showing here, on the other hand, reveals that California has not sought to regulate hotels any differently from other businesses and has essentially no scheme specific to hotels, aside from the requirement of compelled inspection itself.

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[4] Furthermore, in *Burger*, the vehicle dismantler himself conceded that the vehicle dismantling industry was closely regulated. 482 U.S. at 704 n.14.

For the same reason, it does the City little good to point out that other jurisdictions also have ordinances and statutes that require the inspection of hotel guest records. Pet. Br. at 49-50 & n.3. That many jurisdictions have adopted the same, limited regulation of hotels does not show that the hotel industry is pervasively regulated. It, again, proves the opposite point: That jurisdictions are consistent in their minimal regulation of hotels. This is in stark contrast to *Burger*, where the existence of similar, "extensive" administrative schemes in other states reinforced the Court's conclusion. 482 U.S. at 698 & n.11, 705.

Under the City's and its *amici*'s understanding of what constitutes "pervasive regulation," virtually *any* business would meet the test. All industries, like hotels, are subject to a patchwork of broadly applicable laws. And, with very few exceptions, businesses operate under those laws without implicitly consenting to government trespass on their property, and without forfeiting the reasonable expectation of privacy they have in their business records. If this Court were to read the "pervasively regulated" exception as broadly as the City invites, there would effectively be no check on the government's power to search and seize any business's records.

B. Warrantless Inspection Of A "Pervasively Regulated" Business Cannot Be Based On The Government's General Desire To Gather Information Unconnected To The Broader Regulatory Scheme.

Even if the hotel industry were "pervasively regulated," the City's warrantless inspection scheme

would still fail. This Court has never permitted the government to conduct a warrantless inspection program whose chief purpose is *not* to determine whether the business subject to the intrusion is complying with the government's regulatory scheme, but instead to gather information about, and deter crime committed by, third parties.

Rather, this Court has consistently reaffirmed that, even with respect to pervasively regulated businesses, the government must have a substantial interest that "informs the regulatory scheme" and the warrantless inspection must be "necessary to further [the] regulatory scheme." *Burger*, 482 U.S. at 702-03. In each of the four limited instances in which this Court has permitted warrantless inspections of pervasively regulated businesses, the inspection programs at issue served the purpose of ensuring that the business intruded upon was acting in accordance with, and not violating, the regulatory scheme.

In *Colonnade*, the warrantless inspections were informed by and necessary to ensuring that businesses in the liquor industry were complying with, and not committing fraud with respect to, the excise laws that were part of the regulatory scheme. 397 U.S. at 75. Similarly, in *Biswell*, the warrantless inspections were informed by and necessary to ensuring industry compliance with "a crucial part of the regulatory scheme"—namely, the requirement that weapons be "distributed through regular channels and in a traceable manner." 406 U.S. at 315-16. In *Dewey*, the inspection program was informed by and necessary to ensuring that businesses in the mining industry were

complying with the regulatory scheme's mandatory health and safety requirements. 452 U.S. at 596. And in *Burger*, the inspection program was informed by and necessary to ensuring that vehicle dismantlers were not themselves dealing in stolen parts. 482 U.S. at 714.[5]

Here, on the other hand, the requirement that hotels keep guest records subject to warrantless inspection does not exist to ensure *hotels'* compliance with the purported administrative scheme. The City has made that much clear. The purpose, it says, is to allow "the police [to] scan a hotel's register at any time" to make "[p]rostitutes, johns, dealers, and other criminals think twice about conducting their illicit activities." Pet. Br. at 2; *see also* Pet. Br. at 16 (describing "the City's legitimate interest in deterring prostitutes, drug dealers, and other serious criminals from committing crimes in hotels"). *See also* Br. of the United States as *Amicus Curiae* in Support of Petitioner at 26 ("Making guest information available for inspection assists police in finding missing persons, including fugitives, probationers, suspects, and potential witnesses.").

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[5] Indeed, in each of those cases, the specific inspections being challenged were conducted to ensure compliance with the regulatory scheme. *See Colonnade*, 397 U.S. at 73 (inspection to ensure business complied with scheme's excise tax); *Biswell*, 406 U.S. at 312 (inspection to ensure business complied with scheme's licensing requirements); *Dewey*, 452 U.S. at 597 (inspection to ensure business complied with scheme's health and safety requirements); *Burger*, 482 U.S. at 695-96 (inspection to ensure business was not dealing in stolen parts).

The purpose announced by the City in its 2006 amendments to the ordinance at issue is in accord: The "inspection of hotel and motel registers by the police department is a significant factor in reducing crime in hotels and motels." Supp. App. at 8-9. Only when cornered into explaining why its warrantless inspections are "necessary to further" the regulatory scheme does the City suggest that inspections are necessary to ensure that hotels are accurately recording the information. Pet. Br. at 39. That bootstrapping by the City proves too much. If accepted, any time the government seeks information, it could impose a recordkeeping requirement regarding the information, and then assert that spot checks are "necessary to further" that recordkeeping.

Particularly given the fragmented and non-comprehensive nature of the City's purported regulatory scheme, it is clear that the City's inspection program is neither informed by nor furthers that scheme. There is no suggestion that hotels themselves fail to comply with the statutory scheme by providing accommodations to guests who turn out to be prostitutes, johns, dealers, or other criminals. This is thus a case in which businesspersons face unannounced intrusions into private records *not* because of anything that they have done, ought to have done, or might not have done in violation of the regulations imposed upon them, but because the City wishes to gather information about, and deter the criminal conduct of, other people over whom the businesspersons have no control. *Cf. G.M. Leasing Corp.*, 429 U.S. at 352, 354 (warrantless search of business's "books and records"

was unreasonable because "the intrusion not based on the nature of its business, its license, or any regulation of its activities"). Just as this Court would never permit the warrantless frisk of a shopkeeper because of a generalized suspicion about his customers, it should not condone the warrantless compelled inspection of a business's records for a generalized interest in gathering information about possible criminal activities by the business's patrons.

That the warrantless inspection program is not based on any suspicion of wrongdoing by the hotel owners or managers also greatly undercuts the City's argument that "unannounced" and "surprise spot checks" are necessary. Pet. Br. at 39. In such circumstances, "the great majority of businessmen can be expected in normal course to consent to inspection without warrant." *Barlow's*, 436 U.S. at 316. "Nor is it immediately apparent why the advantages of surprise would be lost if, after being refused [access], procedures were available for the [City] to seek an ex parte warrant and to reappear at the premises without further notice to the establishment being inspected." *Id.* at 319-20. To be sure, the occasional need for police to obtain a warrant in a criminal investigation before searching private business records may pose an administrative inconvenience. But since the very purpose of the Fourth Amendment is to inconvenience the government with a judicial check when it seeks to invade private property, "mere administrative inconvenience" obviously "cannot justify invasion of Fourth Amendment rights." *United States v. Robinson*, 414 U.S. 218, 258 & n.7 (1973).

CONCLUSION

For the foregoing reasons, the judgment of the Ninth Circuit should be affirmed.

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